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COMMONWEALTH OF PENNSYLVANIA

THE COMMISSION ON
CONSTITUTIONAL AMENDMENT AND REVISION

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JOURNAL

OF

PROCEEDINGS

VOLUME III

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1921

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THE COMMISSION ON CONSTITUTIONAL AMENDMENT AND REVISION

Members:

William I. Schaffer, Chairman
George E. Alter
Hampton L. Carson
John P. Connelly
Thomas DeWitt Cuyler
Charles H. English
John S. Fisher
Edward J. Fox
James Gay Gordon
John P. Kelly
Vance C. McCormick
Mrs. John O. Miller
R. L. Munce
George Wharton Pepper
William Perrine
Gifford Pinchot
James H. Reed
Edgar Fahs Smith
Edward J. Stackpole
William Kerper Stevens
Mayer Sulzberger
Francis Newton Thorpe
Chester J. Tyson
John A. Voll
Mrs. Barclay H. Warburton

William Draper Lewis, Secretary
Matthew H. Taggart, Assistant Secretary

201773

PROCEEDINGS

Senate Chamber.
Tuesday, April 6, 1920.

The Commission met at 11.30 o'clock A. M.

The Chairman, William I. Schaffer, in the chair.

The CHAIRMAN. The hour fixed for the meeting of the commission having arrived, the commission will be in order.

APPOINTMENT OF WILLIAM KERPER STEVENS.

The CHAIRMAN. The chair recognizes the Hon. Cyrus E. Woods, Secretary of the Commonwealth.

SECRETARY OF THE COMMONWEALTH WOODS. Mr. Chairman: I have the honor to announce the appointment by His Excellency the Governor of the Commonwealth of Judge William Kerper Stevens, of the county of Berks, to membership of this Commission. Judge Stevens takes the place made vacant by the death of Isaac Sharpless. I am now prepared to administer the oath of office to Judge Stevens.

OATH ADMINISTERED TO WILLIAM KERPER STEVENS.

The oath of office was then administered by the Secretary of the Commonwealth to Hon. William Kerper Stevens, as follows:

You, William Kerper Stevens, appointed and commissioned by the Governor of the Commonwealth of Pennsylvania to be a member of "The Commission on Constitutional Amendment and Revision" in and for the Commonwealth of Pennsylvania, do solemnly swear that you will support, obey and defend the Constitution of the United States and the Constitution of this commonwealth, and that you will discharge the duties of your office, with fidelity; that you have not paid or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure your nomination or appointment, except for necessary and proper expenses expressly authorized by law; that you have not knowingly violated any election law of this commonwealth, or procured it to be done by others in your behalf; that you will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or nonperformance of any act or duly pertaining to your office, other than the compensation allowed by law. And so you do swear.

The above oath was then signed by Mr. Stevens.

ROLL CALL.

The roll was called by the secretary, and was as follows:

PRESENT—17.

Alter, English, Fisher, Fox, Gordon, Kelly, McCormick, Miller, Munce, Pepper, Perrine, Stackpole, Stevens, Thorpe, Tyson, Voll, Schaffer (Chairman).

ABSENT—8.

Carson, Connelly, Cuyler, Pinchot, Reed, Smith, Sulzberger, Warburton.

The CHAIRMAN. A quorum of the commission being present, the commission will proceed with its business.

JOURNAL APPROVED.

Mr. FISHER. Mr. Chairman: I move that the reading of the journal be dispensed with and the journal approved.

Mr. STACKPOLE. Mr. Chairman: I second the motion.

The motion was agreed to.

COMMITTEE ASSIGNMENT.

The CHAIRMAN. The chair appoints Judge Stevens as a member of Committee No. 3, the chairman of which committee is Dr. Thorpe.

REPORTS FROM COMMITTEES.

The CHAIRMAN. Are there any reports from committees at this time?

Mr. THORPE. Mr. Chairman: As chairman of committee No. 3, I would like to submit this as a proposition, which has just come up, to amend article VIII, section 1, which falls to this committee.

The secretary read the proposed amendment as follows:

Add at the end thereof the following clauses:

5. He shall not be under conviction or sentence of any court having jurisdiction, or undergoing punishment for any felony, or crime involving moral turpitude.

6. The right of an elector to hold office in this commonwealth shall not be denied provided he (or she) possesses the qualifications prescribed by its Constitution and laws.

Whether article I, section 5-A as printed on page 4 of the preliminary draft should be omitted.

The CHAIRMAN. This amendment will be referred to committee No. 3.

Has any member anything to bring before the commission at this time?

AMENDMENTS PROPOSED AND REFERRED.

Mr. ALTER. Mr. Chairman: I desire to submit for the consideration of the commission a section to be placed in whatever may be its appropriate place in the article relating to taxation, providing as follows:

The valuation of property for municipal taxation shall be made by one body in each county, subject to appeals to court as shall be provided by law, and the valuation thus made shall be the basis of any tax levied by the county or by any other municipality within the same.

I ask that this be referred for consideration.

The CHAIRMAN. The amendment will be referred to committee No. 4, of which Mr. Pepper is chairman.

Has any other member of the commission anything to bring before the commission at this time? If not the chair has certain matters to lay before the commission.

The chair presents and refers to the appropriate committee, committee No. 2, an amendment to article V of the constitution suggested by Judge Wasson, of Pittsburgh.

The secretary read the proposed amendment as follows:

Amend article V, section 11, by striking out the last paragraph and inserting in lieu thereof the following:

In every court composed of two or more judges required to be learned in the law, including the supreme court, each judgeship shall, for the purpose of election or

appointment thereto, be deemed a separate office and be distinguished by number from the other judgeships in the same court. Judgeships existing immediately after this Constitution becomes effective shall be taken to be numbered in the respective courts in the order of the seniority in commission of the judges occupying them.

The CHAIRMAN. The chair presents to the commission and refers to the appropriate committee, committee No. 5, a proposed amendment to the constitution providing a certain measure of home rule for cities of over one hundred thousand in population, suggested by the Allied Boards of Trade of Allegheny county.

The secretary read the proposed amendment as follows:

Amend section 4 of the article on municipalities by adding the following:

The general assembly shall have power to fix the totality of functions of municipalities and from time to time to alter, enlarge or limit such totality of functions; but the general assembly shall have no power to regulate the methods or means by which any city containing over one hundred thousand inhabitants, as determined by the last federal census, shall exercise such totality of functions.

At the first November elections after the promulgation of this Constitution, each city containing more than one hundred thousand inhabitants, determined as aforesaid, shall hold an election to approve or disapprove of a city charter to be proposed by a commission appointed by the mayor and council, which charter shall define the officers amongst whom such totality of functions shall be distributed, the title, method of election or selection, terms of office and compensation of such officers, and all terms, conditions and limitations upon which any or all of such functions may be exercised. Such election shall be by ballot and the will of the majority of the registered electors shall determine the approval or disapproval of such charter, and if such charter be approved the same shall go into effect on the first day of April then next ensuing.

Every municipality except such cities may be authorized by law to create similar distribution of powers by vote of a majority of the electors therein.

The CHAIRMAN. The chair presents to the commission and refers to the appropriate committee, committee No. 3, a proposed amendment to the section of the constitution relative to elections and the qualifications of electors, proposed by George B. Gordon, Esq., of Pittsburgh.

The secretary read the proposed amendment as follows:

Section 1. Every citizen twenty-one years of age, possessing the following qualifications, shall be entitled to vote at all elections; subject, however, to such laws requiring and regulating elections and the registration of electors not inconsistent herewith as the general assembly may enact:

1. He or she shall have been a citizen of the United States at least one month.
2. He or she shall have received either (1) the equivalent of a common school education and be able to speak, read and write the English language with facility, or (2) he or she shall be the owner of a freehold estate of the assessed value, for county purposes, of not less than one thousand dollars, upon which no taxes are in default; and before he or she is registered in any election district, he or she shall produce to the registration officers a certificate as to said qualifications from the school board in which the election district is located if he or she elects to vote on a literacy qualification, or a certificate of the county assessors and treasurer if he or she elects to vote on a property qualification.
3. He or she shall have resided in the state one year (or, having previously been a qualified elector or native-born citizen of the state, he or she shall have removed therefrom and returned, then six months) immediately preceding the election
4. He or she shall have resided in the election district where he or she shall offer to vote at least sixty days (two months) immediately preceding the election.
5. No person who has been convicted of felony or adjudged to be a lunatic shall have the right to vote.

The CHAIRMAN. The chair presents and refers to the appropriate committees certain amendments which, in the study of the preliminary draft, have either occurred to the chair or have been suggested to him by others.

An amendment to Article IX, Section 2, providing exemption, will be referred to Committee No. 4.

The secretary read the proposed amendment as follows:

Amend article IX, section 2, so that it shall read as follows:

Section 2. The general assembly may by general laws exempt persons and property from taxation. In all cases in which exemption is claimed for property used wholly or in part for educational purposes on the ground that the same is an actual place of religious worship or a purely public charity, the exemption shall be allowed only where the language of instruction is English and where the educational standards are at least as high as the standards of public schools of a similar grade.

Note: The purpose of this amendment is, as its text denotes, to empower the general assembly to exempt persons and property from taxation. This would enable the legislature to pass a law taxing incomes over a certain amount, which at present cannot be constitutionally done.

The CHAIRMAN. An amendment to article V, section 2, providing that the number of justices of the supreme court be seven instead of nine, which will be referred to committee No. 2.

The secretary read the proposed amendment as follows:

Amend article V, section 2, to read as follows:

Section 2. The supreme court shall consist of seven justices learned in the law, who shall be elected by the qualified electors of the state at large. They shall hold their offices for the term of twenty-one years, if they so long behave themselves well, and shall not be again eligible. The justice oldest in commission shall be the chief justice, and thereafter each justice whose commission shall first expire shall in turn be chief justice.

Note: The purpose of this amendment is to continue the number of justices of the supreme court at seven instead of nine as recommended by the commission in its preliminary draft.

The CHAIRMAN. An amendment to article V, section 3-A, providing that the terms of superior court judges shall be twenty-one years and that they shall not be eligible for re-election, which will be referred to committee No. 2.

The secretary read the proposed amendment as follows:

Amend article V, section 3-A, to read as follows:

Section 3-A. The superior court shall consist of seven judges learned in the law, who shall be elected by the qualified electors of the state at large. They shall hold their office for the term of twenty-one years, if they so long behave themselves well, and shall not be eligible for re-election. The judge oldest in commission shall be president judge

Note: The purpose of this amendment is to make the term of a superior court judge twenty-one years instead of sixteen years, as recommended in the preliminary draft. A man as a rule is not elevated to the superior court bench until he has reached the middle age of life. At the expiration of the sixteen-year period the retiring member of the bench feels himself too young to retire. There is, however, small likelihood of his former clients returning to him after such an interval of time, and the period between the expiration of his judicial term and the time when he feels compelled, on account of age, to retire to private life is so short that there is small likelihood of a proper paying practice being developed. There is no reason why the term of the superior court judge shall be different from that of the supreme court justices.

The CHAIRMAN. Article V, section 12, certain amendments to the minor judiciary provisions in Philadelphia, changing the designation of the peace court judges to justices of the peace and providing for their jurisdiction, which will be referred to committee No. 2.

The secretary read the proposed section as follows:

Amend article V, section 12, so as to read as follows:

Section 12. The general assembly shall divide the county of Philadelphia into eighteen numbered districts of compact territory as nearly equal in population as shall be possible. After each United States decennial census the court of common

pleas may change the boundaries of any districts and may create new districts, the number of which, however, together with the districts in existence, shall never exceed more than one for each one hundred thousand of population of said county.

A court not of record of police and civil causes, to be known as a district peace court, and with jurisdiction not exceeding three hundred dollars, is hereby established in each of such districts, to be composed of one person, learned in the law, and who shall be known as a justice of the peace. Such court shall have such civil and criminal jurisdiction as is from time to time exercised by justices of the peace in districts containing a borough or township. The general assembly may change their powers and jurisdiction, but no law shall be passed increasing the amount of their civil jurisdiction or imposing on them political duties. It shall also regulate the costs of proceedings in such courts and shall provide for the relief of persons who by reason of poverty are unable to pay such costs. Rules of practice and procedure shall be prescribed by the court of common pleas of Philadelphia county.

Such justices of the peace shall be chosen at a municipal election by the qualified electors of the respective districts, and shall hold office for a term of six years from the first Monday of January next ensuing; if they shall so long behave themselves well. Such justices of the peace shall have been inhabitants of their respective districts two years next before their election (unless absent on the public business of the United States or of this state), and shall reside in their respective districts during their term of office. They shall be removed from office for reasonable cause found by the court of common pleas of the county, after hearing, and upon petition setting forth said cause, signed by at least five hundred electors of the proper district, or they may be removed in the manner prescribed by article VI of this constitution.

Vacancies in the office of such justices of the peace shall be filled by the governor.

The said justices of the peace shall receive a salary for all judicial services rendered by them, which shall be in lieu of all other compensation, and which shall be fixed by law and paid by the county. All fees, fines and penalties in said courts shall be paid into the county treasury.

Magistrates now in office shall serve out their unexpired terms, after which time the office of magistrate and magistrates' courts in Philadelphia are hereby abolished.

The general assembly shall, upon the adoption of this constitution, enact such laws as may be necessary to fully carry into effect the several provisions of this section.

Note: The purpose of this amendment is to change the name of the person holding the district peace courts in Philadelphia from "judge" to "justice of the peace." The term "judge" is objectionable in that it may occasion confusion to the legislature in conferring powers on the judiciary; thus if an act of assembly conferred a certain power on judges, the question would be immediately presented whether or not it was intended to mean judges of the district peace courts in Philadelphia.

The CHAIRMAN. An amendment to article V, section 11, to amend the last clause in the section as it stands in the preliminary draft, so that the word "act" may be omitted. Its use is an inadvertence, and perhaps could be corrected by the committee on style. The amendment will be referred to committee No. 2.

The secretary read the proposed amendment as follows:

Amend article V, section 11, by striking out the last paragraph and inserting in lieu thereof the following:

The general assembly shall, upon the adoption of this constitution, regulate the costs in proceedings before justices of the peace, shall provide for the relief of persons who by reason of poverty are unable to pay such costs, and shall enact such other laws as may be necessary to fully carry the several provisions of this section into effect.

Note: The purpose of this amendment is to correct the inadvertent use of the word "act" in the last line of said paragraph.

The CHAIRMAN. An amendment to article IV, section 8, the purpose of which is to change the title of "superintendent of public instruction" to "commissioner of education," which will be referred to committee No. 1.

The secretary read the proposed amendment as follows:

Amend first paragraph of article IV, section 8, to read as follows:

Section 8. The governor shall nominate and, by and with the advice and consent of the majority of all the members of the senate, appoint a secretary of the commonwealth, an attorney general and a secretary of internal affairs during his

pleasure, a commissioner of education for four years, and such other officers of the commonwealth as he is or may be authorized by the constitution or by law to appoint.

Note: The purpose of this amendment is to change the title of the superintendent of public instruction to commissioner of education.

PUBLIC HEARINGS.

The CHAIRMAN. The chair is informed by the secretary that the hearings that were fixed for Thursday of this week can be just as conveniently put over until next week under the arrangements that exist for next week. It would seem to the chair that this is the better plan rather than to keep the members of the commission here with but one or two questions on Thursday. Therefore, there will be no public hearings on Thursday and the hearings arranged for Thursday will go over until next week. It is the desire of the chair, and I think it is very important, that members of the commission, however, shall remain here for the discussions that are to take place on Wednesday evening. I think they can all get out on the night train. The discussions for Wednesday evening are really on very important matters, and the gentlemen who are coming here to discuss the questions on Wednesday evening come at a personal sacrifice to themselves in order to meet the situation which was created by the number of hearings to which the commission has been asked to listen.

The members of the commission know the schedule that is on their desks. The hearings for this afternoon begin at two o'clock, and it is the desire that they shall be here promptly in order that the hearings may be gotten under way immediately. There are other hearings arranged for this evening which will begin at eight o'clock.

The chair desires to suggest to the commission, and to say that arrangements have been made, that when the members of the commission come back at two o'clock this afternoon, and at all other times when public hearings are taking place before the commission, that the members of the commission shall seat themselves at these desks, so that they are behind the bar of the senate here, and the persons who make the arguments can make their addresses from the floor of the senate and face all the members of the commission, rather than that the members of the commission shall keep their seats on the floor. Suitable seating arrangements will be made for all members of the commission to carry out that purpose.

APPOINTMENT OF CHIEF STENOGRAPHER.

The CHAIRMAN. The chair would like to suggest to the commission that in working out the stenographic work of the commission it has been practically demonstrated that some one man should be responsible for the stenographic work, both to see that the reporting is properly cared for and that transcriptions are properly made and the work centralized. It is the law, so far as the legislature is concerned, that the man who assumes this responsibility is paid a little higher compensation than the other stenographers, and the payment for all stenographers is fifteen dollars per day. It seems to the chair that it might be the proper thing to compensate the stenographer who is charged with the full responsibility and management of the stenographic force at the rate provided by the act of assembly for the chief stenographers of the senate and house of representatives, which is eighteen dollars a day.

Mr. FISHER. Mr. Chairman: I move that the chief stenographer be paid a salary of eighteen dollars per day for his services.

Mr. PEPPER. Mr. Chairman: I second the motion.

The motion was agreed to.

SPECIAL COMMITTEES.

Mr. THORPE. Mr. Chairman: I would like to present a little matter. It is a matter of information. It is not impossible, Mr. Chairman, that the hearings will provoke more particular inquiry than has heretofore been provoked in the special committee. It has been a question in my mind, perhaps suggested by friends outside, whether the chairman should not be authorized or requested to appoint any special committees that he thought proper to take into consideration any particular matters instead of referring the same to the stated committees 1 to 5, that the chairman at his discretion should appoint a particular committee to take up any particular article that may be of special interest in the hearing. I raise this question now, Mr. Chairman, to get the opinion of the commission. I do not make a motion, but will make a motion if it seems expedient.

Mr. FISHER. Mr. Chairman: Would it not be in line with good practice to defer any motion on the subject until the matter of special inquiry should arise, and then a proper motion might be made for the appointing of such committees, with the stipulated authority that we make that a general blanket motion? It is a little hard to see how these provisions might apply until the occasion arises.

The CHAIRMAN. Does that meet the situation Dr. Thorpe has in mind?

Mr. THORPE. That is very proper, sir.

The CHAIRMAN. Then the question can come up when some particular exigency arises.

PROCEEDINGS OF PUBLIC HEARINGS NOT TO BE PRINTED.

The CHAIRMAN. The chair would like an expression of opinion from the commission as to whether or not the arguments and addresses that are made should be reported and printed. The thought of the chair was, after giving it some consideration, and particularly in view of the difficulty of the printing situation that now exists both from the paper supply standpoint and other standpoints in the state printery, that it might be well to have all of the arguments and addresses that are made reported stenographically but not transcribed unless there was some special call for them, and not printed at all except by a vote of the members of the commission. We will be getting a very large record here, and it may be of very little use hereafter in discussions which will take place, but if we have them in the stenographic notes they can be gotten out at any time that is desired. The chair would like an expression of opinion from the commission on that subject.

Mr. PEPPER. Mr. Chairman: I move you, sir, that a stenographic record be taken, but that the transcription and printing of the notes thus taken shall take place only on special motion upon particular occasions.

Mr. VOLL. Mr. Chairman: I second the motion.

The motion was agreed to.

RECESS.

Mr. FISHER. Mr. Chairman: I move that the commission do now take a recess until 2 o'clock this afternoon.

Mr. PEPPER. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 12.30 o'clock P. M., the commission took a recess until 2 o'clock.

AFTER RECESS.

The commission reconvened at 2 o'clock P. M.

The Chairman, William I. Schaffer, in the chair.

The CHAIRMAN. The hour for the reconvening of the commission having arrived, the commission will be in order.

The following persons addressed the commission in public hearing on the following subjects:

John Ihlder, Secretary of the Philadelphia Housing Association,—Municipal Improvements; Housing.

Andrew Wright Crawford, representing the American Civic Association,—Municipal Improvements.

William M. Jacoby, representing the Flood Commission,—Article on Municipalities—sections 5, 18 and 19.

William S. Twining, Director of City Transit, Ptiladelphia,—Municipal Financial Provisions.

Owen J. Roberts, representing Special Committee of Mayor Moore,—Municipal Financial Provisions.

James Collins Jones, representing the Philadelphia Chamber of Commerce and the Pennsylvania State Chamber of Commerce,—Municipal Financial Provisions.

George S. Webster, Chief of the Bureau of Surveys, Philadelphia,—Municipal Financial Provisions.

F. P. Gruenberg, representing the Philadelphia Bureau of Municipal Rerearch,—Municipal Provisions.

Maurice R. Scharff, Pittsburgh,—Municipal Financial Provisions.

RECESS.

Mr. THORPE. Mr. Chairman: I move the commission do now take a recess until 8 o'clock this evening.

Mr. STACKPOLE. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 4.30 o'clock P. M., the commission took a recess until 8 o'clock P. M.

AFTER RECESS.

The commission reconvened at 8 o'clock P. M.

The Chairman, William I. Schaffer, in the chair.

The CHAIRMAN. The hour fixed for the reconvening of the commission having arrived, the commission will be in order.

The following persons addressed the commission in public hearing on the subject of Proportional Representation:

Clarence G. Hoag, General Secretary of the American Proportional Representation League, Philadelphia.

Professor Rayner W. Kelsey, of Haverford College, Haverford.

John A. Phillips, Vice President of the Pennsylvania Federation of Labor, Philadelphia.

Miss Mary H. Ingham, Vice President of the Philadelphia Women's Trade Union League, Philadelphia.

J. Henry Scattergood, former Registration Commissioner of Philadelphia.

Henry J. Gibbons, Esq., former Assistant District Attorney, Philadelphia.

Dr. H. W. Dodds, formerly Secretary of the People's Association of Pennsylvania, now Secretary of the National Municipal League, Philadelphia.

E. Lewis Burnham, Philadelphia.

ADDJOURNMENT.

Mr. STACKPOLE. Mr. Chairman: I move that the commission do now adjourn until tomorrow morning at 10 o'clock.

Mr. ENGLISH. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 10.30 o'clock P. M., the commission adjourned until 10 o'clock tomorrow morning.

Senate Chamber,

Wednesday, April 7, 1920.

The Commission met at 10 o'clock A. M.

The Chairman, William I. Schaffer, in the chair.

The CHAIRMAN. The hour fixed for the meeting of the commission having arrived, the commission will be in order.

ROLL CALL.

The roll was called by the secretary and was as follows:

PRESENT—19.

Alter, Cuyler, English, Fisher, Fox, Gordon, Kelly, McCormick, Miller, Munce, Pepper, Perrine, Pinchot, Stackpole, Stevens, Thorpe, Tyson, Voll, Schaffer (Chairman).

ABSENT—6.

Carson, Connelly, Reed, Smith, Sulzberger, Warburton.

The CHAIRMAN. A quorum of the commission being present, the commission will proceed with its business.

Has any member of the commission anything to bring before the commission at this time?

AMENDMENTS PROPOSED AND REFERRED.

The CHAIRMAN. The chair lays before the commission a proposed amendment to the constitution suggested by Hon. John S. Rilling.

The secretary read the proposed amendment as follows:

The natural resources of our state, the common inheritance of our people, should, with a due regard for the present and future, be conserved and consumed as a public use, subject to such reasonable regulations and restrictions as the general assembly may impose upon any proprietary rights thereto.

The CHAIRMAN. The amendment will be referred to committee No. 1.

The chair also lays before the commission an amendment to the constitution suggested by the Johnstown Chamber of Commerce.

The secretary read the amendment as follows:

Resolved, That the Johnstown Chamber of Commerce hereby endorses the action of the legislative committee of the Allegheny County Civic Club in recommending the following resolution for the favorable consideration of the Commission on Constitutional Amendment and Revision.

No new county shall be established which shall reduce any county to less than fifty thousand inhabitants, nor shall any county be formed containing a less population.

The CHAIRMAN. The amendment will be referred to committee No. 5.

The chair also lays before the commission a suggested amendment to the constitution relating to the pardoning power submitted by Mr. Abbott, being an amendment to section 9 of article IV.

The secretary read the amendment as follows:

Section 9. He shall have power to remit fines and forfeitures, to grant reprieves, commutation of sentence, pardons and conditional pardons, except in cases of impeachment, but no pardon shall be granted nor sentence commuted except upon the recommendation of a majority of a board of pardons to be created by act of the general assembly. Until such board of pardons is created no pardon shall be granted nor sentence commuted except upon the recommendation in writing of the lieutenant governor, secretary of the commonwealth, attorney general and secretary of internal affairs, or any three of them, after full hearing, upon due public notice and in open session, and such recommendation, with the reasons therefor at length, shall be recorded and filed in the office of the secretary of the commonwealth.

The CHAIRMAN. The amendment will be referred to committee No. 4.

The chair also lays before the commission an amendment to article VIII, section 1 of the constitution, on the subject of suffrage and elections, suggested by H. K. Siebeneck, Esq., of Pittsburgh.

The secretary read the amendment as follows:

Add as clause 4. If he offer to vote in a district where personal registration is requisite, he shall have resided sixty days in such district next prior to any primary election day.

Comment. Under the system existing in Allegheny county the primary election is the really important election in very many cases. Personal registration was adopted as a means of preventing "colonization," because of the fact that the length of time requisite to keep a "floater" in a doubtful district (extending from the last registration day to the election day, a period of generally two months) was so expensive as to be impractical on a large scale. But as the law now stands the last registration day may come *three* days before the primary and the very purpose of personal registration is thus nullified and the same evil which existed arises again. This subject presents a good many practical difficulties and I do not know that the suggestion I now make is the best one that can be made to overcome the difficulty.

Section 16. Overseers of Election. Strike out the requirements that the petition for overseers must be by legal voters of the election district and that the overseers shall be residents therein. Troubles arise in the congested districts where out of two hundred or three hundred voters there is often not one properly qualified to act as an overseer.

The CHAIRMAN. The amendment will be referred to committee No. 3.

The chair also lays before the commission an amendment to section 5 of the new article on municipalities suggested by the League of Boroughs.

The secretary read the amendment as follows:

The general assembly, in order to facilitate public works for the benefit of two or more municipalities, may provide for the creation of classes of incorporated districts which may extend over more than one municipality, and may vest in such incorporated district one or more of the powers already exercised by the municipalities within their respective boundaries, and may make any power so vested an exclusive power or a power concurrent with the municipalities wholly or partly within their respective boundaries; provided, that no such incorporated district shall be created or its boundaries extended or its powers increased except by the consent of at least a majority of electors resident within each of the several municipalities within the proposed boundaries of the incorporated district as shall vote on the question at an election which shall be held as may be provided by law; provided further, that no incorporated district shall be created entirely within the boundaries of a city or borough; and provided further, that any municipality voting against becoming a part of said proposed incorporated district shall be excluded therefrom.

The CHAIRMAN. The amendment will be referred to committee No. 5.

The following persons addressed the commission in public hearing on the following subjects:

Robert J. Patterson, representing the Bureau of Municipal Research of Philadelphia—State Budget.

F. P. Gruenberg, representing the Bureau of Municipal Research of Philadelphia—Consolidated City and County Government in Philadelphia.

Joseph T. Miller, Secretary of the League of Boroughs and Townships of Allegheny County—Article on Municipalities, sections 4 and 5.

John Redmond, Jr., representing the League of Boroughs and Townships of Allegheny County—Municipalities.

T. P. Chrostwaite, President of the Pennsylvania State Association of Boroughs—Boroughs.

William P. Siegert, of Philadelphia, representing the Commission to Investigate Systems of Recording Deeds, etc., and Registration of Land Titles—Article III, section 21-A.

Thomas H. McCaffrey, of Philadelphia, representing the Building Association League of Pennsylvania—Article III, section 21-A.

Clinton R. Woodruff, of Philadelphia, representing National Municipal League—Municipal Home Rule.

Frederick Clark, of Philadelphia—Increase of Capital Stock and Indebtedness of Corporations.

RECESS.

Mr. PERRINE. Mr. Chairman: I move the commission do now take a recess until 2.30 o'clock P. M.

Mr. STEVENS. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 1 o'clock P. M., the commission took a recess until 2.30 o'clock P. M.

AFTER RECESS.

The commission convened at 2.30 o'clock P. M.

The Chairman, William I. Schaffer, in the chair.

The CHAIRMAN. The hour fixed for the reconvening of the commission having arrived, the commission will be in order.

PROCEEDINGS OF PUBLIC HEARINGS TO BE TRANSCRIBED.

The CHAIRMAN. In pursuance of a resolution which the commission adopted yesterday, it was decided that the stenographic notes of the arguments made before the commission should not be transcribed. That part of the order of yesterday's business deciding against the transcription of the notes will be abrogated. The notes will be transcribed but not printed; that is to say, they will be typewritten but not printed by the state printer unless there is a special call for them.

The following persons addressed the commission on the following subjects:

Samuel B. Scott, Esq., of Philadelphia, representing the Constitutional Club—Classification.

Article IX; Taxes; Coal; Mine-caves:—

Mark K. Edgar, General Secretary Scranton Board of Trade.

C. B. Little, Chairman Legislative Bureau, Scranton Board of Trade.

Rudolph Houpt, City Solicitor of Scranton.

Philip Mathias, Esq., Attorney for Scranton People's Protective Association.

Frank M. Walsh, representing Scranton People's Protective Association.

Rev. George J. Lucas, Pastor St. Patrick's Roman Catholic Church, Scranton, Pa.

R. A. Zimmerman, representing Citizens' Committee on Mine-caves.

RECESS.

Mr. FISHER. Mr. Chairman: I move the commission do now take a recess until 8 o'clock P. M.

Mrs. MILLER. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 6.05 o'clock P. M., the commission took a recess until 8 o'clock P. M.

AFTER RECESS.

The commission reconvened at 8 o'clock P. M.

The Chairman, William I. Schaffer, in the chair.

The CHAIRMAN. The hour fixed for the reconvening of the commission having arrived, the commission will be in order.

The following persons addressed the commission in public hearing on the subject of Municipalities:

F. P. Schoonmaker, Esq., City Solicitor of Bradford.

Newton B. Turner, Esq., City Solicitor of Easton.

Claude T. Reno, Esq., City Solicitor of Allentown.

Spencer M. DeGolier, Mayor of Bradford.

E. S. Hugentugler, Mayor of York, and President of the League of Third Class Cities.

ADJOURNMENT.

Mr. THORPE. Mr. Chairman: I move that the commission do now adjourn until Tuesday morning, April 13, 1920, at 11.30 o'clock.

Mr. ENGLISH. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 9.35 o'clock P. M., the commission adjourned until Tuesday morning, April 13, 1920, at 11.30 o'clock.

Senate Chamber,
Tuesday, April 13, 1920.

The Commission met at 11.30 o'clock A. M.

The Chairman, William I. Schaffer, in the chair.

The CHAIRMAN. The hour fixed for the meeting of the commission having arrived, the commission will be in order.

ROLL CALL.

The roll was called by the secretary and was as follows:

PRESENT—13.

Alter, Fisher, Kelly, McCormick, Miller, Munce, Perrine, Pinchot, Reed, Stackpole, Stevens, Thorpe, Schaffer (Chairman).

ABSENT—12.

Carson, Connelly, Cuyler, English, Fox, Gordon, Pepper, Smith, Sulzberger, Tyson, Voll, Warburton.

The CHAIRMAN. A quorum of the commission being present, the commission will proceed with its business.

The chair would like to announce that word has been received from Mr. William S. Jenney, who was to speak on the subject of mine-caves, that he is prevented from being present by train delays occasioned by the railroad strike, but desires to be heard at a subsequent time. This also applies to Mr. J. F. Schapperkotter, who was scheduled to speak on the subject of appropriations to charitable institutions.

Has any member anything to bring before the commission?

ALLEGHENY COUNTY MEDICAL SOCIETY.

Mr. THORPE. Mr. Chairman: The Allegheny County Medical Society has very much at heart what they consider an abuse of public functions concerning the administration of hospitals, and the question is whether the committee of this Allegheny County Medical Society should ask for a hearing before the commission or appear before the legislature. They want to present a matter with reference to the administration of the hospitals as by law provided, and wish to have a clause inserted in the constitution which will correct the abuse. I told the committee I would present the case to the commission, and the commission would decide whether they should appear before the commission or appear before the legislature.

The CHAIRMAN. It seems to the chair that the matter is a legislative and not a constitutional question, it being, as the chair understands from Dr. Thorpe, a question of administration. Unless there is objection, the chair will instruct the secretary to notify the committee that, in the opinion of the commission, this is a matter that should be brought to the attention of the legislature rather than to the attention of this commission.

PUBLIC HEARINGS.

Hon. Francis Shunk Brown, former Attorney General of Pennsylvania, addressed the commission in public hearing on the subject of Preliminary Draft in general.

RECESS.

Mr. STACKPOLE. Mr. Chairman: I move that the commission do now take a recess until 2 o'clock this afternoon.

Mr. REED. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 1 o'clock P. M., the commission took a recess until 2 o'clock P. M.

AFTER RECESS.

The Commission reconvened at 2 o'clock P. M.

The Chairman, William I. Schaffer, in the chair.

The CHAIRMAN. The hour fixed for the reconvening of the commission having arrived, the commission will be in order.

AMENDMENTS PROPOSED AND REFERRED.

The CHAIRMAN. The chair lays before the commission some suggested amendments introduced by Dr. Thorpe by request.

The secretary read the proposed amendments as follows:

1. Omit the word "educational" from section 17 of article III, first line, page 16 of the preliminary draft.
2. Retain provision for poll tax, section 4 of article VIII, page 37 of the preliminary draft.
3. Change the words "four hundred" to "three hundred" and the words "twenty thousand" to "fifty thousand" in section 3 of the article on municipalities, page 52 of the preliminary draft.
4. Retain section 6 of article XVII, page 50 of the preliminary draft, as it is in the Constitution of 1874.

The CHAIRMAN. Amendment No. 1 will be referred to committee No. 1; amendment No. 2 will be referred to committee No. 2; amendment No. 3 will be referred to committee No. 5; and amendment No. 4 to committee No. 4.

PUBLIC HEARINGS.

The following persons addressed the commission in public hearing on the following subjects:

Hon Francis Shunk Brown (continuing), on the Preliminary Draft in general.

P. A. Meisell, Chairman of the Executive Committee of the County Commissioners Association of Pennsylvania—Section 14 of the Article on Municipalities, County Commissioners and County Auditors.

Kenneth L. M. Pray, Secretary of the Public Charities Association—Charitable Appropriations.

Hon. George Woodward, of Philadelphia—Charitable Appropriations.

T. M. Hindman, Esq., of Philadelphia, attorney for the Retail Merchants Association—Section 7 of article III.

Lawrence H. Rupp, of Hazleton—Erection of New Counties.

William J. Wilcox, of Harrisburg—Future Amendments.

Watson B. Adair, of Pittsburgh, representing the Civic Club of Allegheny County, on the Preliminary Draft in general.

RECESS.

Mrs. MILLER. Mr. Chairman: I move that the commission do now take a recess until 8 o'clock P. M.

Mr. STEVENS. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 5.46 o'clock P. M., the commission took a recess until 8 o'clock P. M.

AFTER RECESS.

The Commission reconvened at 8 o'clock P. M.

The Chairman, William I. Schaffer, in the chair.

The CHAIRMAN. The hour fixed for the reconvening of the commission having arrived, the commission will be in order.

PUBLIC HEARINGS.

The following persons addressed the commission in public hearing on the following subjects:

Hon. John J. Coyle, of Philadelphia—Excess Condemnation; Assessment of Benefits.

Albert H. Votaw, of Philadelphia, Secretary Prison Association Society—Penal Affairs.

George W. Kirchwey, former Dean of Columbia Law School—Penal Affairs.

Harold W. Dodds, of Philadelphia, representing People's Association of Pennsylvania—County Government.

J. M. Ziegler, representing People's Association—County Government.

A. Leo Weil, Esq., of Pittsburgh, representing the Voters League—Municipal Courts; Election Laws; Justices of the Peace.

ADJOURNMENT.

Mr. ALTER. Mr. Chairman: I move that the commission do now adjourn until tomorrow morning at 10 o'clock.

Mrs. MILLER. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 9.59 o'clock P. M., the commission adjourned until 10 o'clock tomorrow morning.

Senate Chamber,

Wednesday, April 14, 1920.

The Commission met at 10 o'clock A. M.

The Chairman, William I. Schaffer, in the chair.

The CHAIRMAN. The hour fixed for the meeting of the commission having arrived, the commission will be in order.

ROLL CALL.

The roll was called by the secretary and was as follows:

PRESENT—13.

Alter, Connelly, Fisher, Kelly, Miller, Munce, Perrine, Pinchot, Reed, Stackpole, Stevens, Thorpe, Schaffer (Chairman).

ABSENT—12.

Carson, Cuyler, English, Fox, Gordon, McCormick, Pepper, Smith, Sulzberger, Tyson, Voll, Warburton.

The CHAIRMAN. A quorum of the commission being present, the commission will proceed with its business.

COMMUNICATION FROM LEBANON CHAMBER OF COMMERCE.

The CHAIRMAN. The chair lays before the commission a letter from the Lebanon Chamber of Commerce, protesting against section 4 of the new article on municipalities, which will be filed with the secretary.

PRINTING OF BRIEF PREPARED BY MR. PRAY.

Mrs. MILLER. Mr. Chairman: I move that the secretary be instructed to have printed the brief prepared by Mr. Pray on the subject of charitable appropriations, and that copies be furnished to the members of the commission.

Mr. KELLEY. Mr. Chairman: I second the motion.

The motion was agreed to.

COMMITTEE TO VISIT SCRANTON.

Mr. PINCHOT. Mr. Chairman: I move that a committee of five be appointed for the purpose of visiting the city of Scranton to view the mine-cave situation and make subsequent report for the information of the commission.

Mr. THORPE. Mr. Chairman: I second the motion.

The motion was agreed to.

The CHAIRMAN. The chair will appoint the committee later.

ANNOUNCEMENT IN REFERENCE TO AMENDMENTS.

The CHAIRMAN. The chair would like to state to the members of the commission that it is important that any amendments that they formulate or any that may be submitted to them should be turned over to the secretary at the earliest possible moment. The public hearings will be completed next week, and then a calendar will be prepared by the secretary for action by the commission; so that it is important that all amendments shall be in the hands of the secretary in order that they may be placed upon the calendar.

CORRECTION OF ERROR.

Mr. REED. Mr. Chairman: As a member of the committee to which was referred article XVII, relating to railroads, just so that it is not forgotton, I wish to call attention to a mistake in the printed draft. Section 1 was not dropped, but was amended, and should have been reprinted. It contains Mr. Pinchot's canals, which are very important.

The CHAIRMAN. The secretary will take notice of the matter to which Judge Reed calls attention, that section 1 of article XVII has been inadvertently left out of the draft and should be reinserted.

AMENDMENTS PROPOSED AND REFERRED.

The CHAIRMAN. The chair lays before the commission a suggested amendment to section 5 of the article on municipalities, proposed by W. M. Jacoby, executive secretary of the Flood Commission of Pittsburgh.

The secretary read the proposed amendment as follows:

The general assembly, in order to conserve, develop and utilize the water resources of the state, may provide for the creation of classes of incorporated districts which may extend over more than one municipality, and may vest in such incorporated districts power to provide for the regulation of the flow of streams, flood control, water transportation, water supply and development of water power. No such incorporated district shall be created, or its boundaries extended, or its powers increased, except by the consent of at least a majority of such electors resident within the proposed boundaries of the incorporated district as shall vote on the question at an election which shall be held as may be provided by law. No incorporated district shall be created entirely within the boundaries of a city or borough.

The CHAIRMAN. The amendment will be referred to committee No. 5.

The chair lays before the commission a proposed amendment to section 7 of the article on municipalities, suggested by H. W. Dodds, Esq.

The secretary read the proposed amendment as follows:

County commissioners and sheriffs shall be elected. All other municipal officers shall be elected or appointed by an officer or agency of the municipality as may be provided by law.

The CHAIRMAN. The amendment will be referred to committee No. 5.

The chair lays before the commission a suggested amendment to section 13 of the article on municipalities, also proposed by H. W. Dodds, Esq.

The secretary read the proposed amendment as follows:

Until otherwise provided by law, county officers shall consist of sheriffs, coroners, prothonotaries, registers of wills, recorders of deeds, commissioners, treasurer's surveyors, auditors or controllers, clerks of the courts and district attorneys; and no sheriff or treasurer shall be eligible for the term next succeeding the one for which he may be chosen.

The CHAIRMAN. The amendment will be referred to committee No. 5.

The chair lays before the commission amendments to the constitution suggested by the Pennsylvania Prison Society.

The secretary read the proposed amendments as follows:

NEW ARTICLE.

Section 1. The general assembly shall provide for the maintenance and support of an efficient system of penal and correctional institutions and agencies, whereby all prisoners convicted of any crime, felony or misdemeanor shall, subject to

conditions of probation and parole as may be determined by law, be employed in useful and profitable labor, and shall receive such treatment and instructions as shall tend to qualify them to become useful citizens. The prisoners thus employed shall receive compensation equal to their earnings, a deduction to be made not to exceed the cost of trial and maintenance.

Section 2. Department of Administration and Supervision. The general assembly shall create such administrative and supervisory department or departments or agencies as may be necessary to carry out efficiency and provisions of this article.

The CHAIRMAN. These amendments will be referred to committee No. 5.

The chair also lays before the commission another amendment suggested by Pennsylvania Prison Society.

The secretary read the proposed amendment as follows:

Suggested change in section 13 of article I.

This article now reads as follows:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

To this article amendments are proposed so that the article shall read as follows:

Excessive bail shall not be required, nor excessive fines or periods of imprisonment imposed, nor cruel punishments, including any form of corporal punishment, inflicted, nor shall conditions of imprisonment be detrimental to the physical, mental or moral welfare of prisoners.

The CHAIRMAN. This amendment will be referred to committee No. 1.

The chair lays before the commission a further amendment suggested by the Pennsylvania Prison Society.

The secretary read the proposed amendment as follows:

Suggested change in section 1 of article X.

The Commission has already suggested a change in this article so that, as proposed, it reads as follows:

Section 1. The general assembly shall provide for the maintenance and support of a thorough and efficient system of public schools wherein all the children of this commonwealth may be educated, including the care and education of the deaf, the dumb and the blind.

We suggest the addition of the following clause; and the direction and supervision of the schools in the correctional institutions of the state.

The CHAIRMAN. This amendment will be referred to committee No. 5.

The chair also lays before the commission an amendment suggested by Ernest H. Davis, Esq., of Williamsport.

The secretary read the proposed amendment as follows:

Section 4 of article XVII in the tentative draft reads as follows:

CONSOLIDATION PERMITTED.

Section 4. Subject to such regulations as shall be prescribed by general law or by such agency as may be constituted from time to time by the general assembly, corporations for public service may consolidate with or purchase the property of or may, through stock ownership or otherwise, acquire and exercise the control of other corporations formed for the same or a kindred purpose.

We suggest that this section be amended by the insertion of the words "and franchises" after the word "property" in the fourth line; also the insertion of the words "public service" after the word "other" in the fifth line; also by striking out the words "formed for the same or a kindred purpose" in the last line.

The CHAIRMAN. This amendment will be referred to committee No. 4.

TIME OF THE NEXT MEETING.

The CHAIRMAN. The chair desires to state, in answer to an inquiry of a member of the commission, that there will be no hearings this evening; and it might be well, in order that a plan for next week

should be agreed upon, that the understanding should be reached that we will again meet at the usual hour, 11.30 A. M., next Tuesday, and will be in session next week, Tuesday, Wednesday and Thursday.

PUBLIC HEARINGS.

The following persons addressed the commission in public hearing on the following subjects:

A Leo Weil, Esq. (continuing)—Municipal Courts, Election Laws, Justices of the Peace.

Albert Smith Faught, representing the Civil Service Reform Association of Pennsylvania—Civil Service Provisions.

R. Francis Wood, representing the Civil Service Reform Association of Pennsylvania—Civil Service Provisions.

Mr. Gilkyson—Civil Service Provisions.

RECESS.

Mr. PINCHOT. Mr. Chairman: I move that the commission do now take a recess until 2 o'clock P. M.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 1 o'clock P. M., the commission took a recess until 2 o'clock P. M.

AFTER RECESS.

The Commission reconvened at 2 o'clock P. M.

The Chairman, William I. Schaffer, in the chair.

The CHAIRMAN. The hour fixed for the reconvening of the commission having arrived, the commission will be in order.

PUBLIC HEARINGS.

The following persons addressed the commission in public hearing on the following subjects:

A. R. Hatton, of Cleveland, Ohio, representing the People's Association of Pennsylvania—City and County Government.

Reginald Heber Smith, of Boston—Justice and the Poor.

James Collins Jones, representing the State Chamber of Commerce—State Budget.

Frederick P. Gruenberg, representing the Bureau of Municipal Research of Philadelphia—Municipal Government.

Samuel Rosenbaum, representing the Constitutional Club of Philadelphia—Rule-making Power of the Courts.

T. Henry Walnut, of Philadelphia, representing People's Association of Pennsylvania—The Judiciary Article.

R. A. Zimmerman—County, City and Borough Government.

ADJOURNMENT.

Mr. THORPE. Mr. Chairman: I move that the commission do now adjourn until Tuesday morning, April 20, 1920, at 11.30 o'clock.

Mr. MUNCE. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 6.25 o'clock P. M., the commission adjourned until Tuesday morning, April 20, 1920, at 11.30 o'clock.

Senate Chamber,
Tuesday, April 20, 1920.

The Commission met at 11.30 o'clock A. M.
The Chairman, William I. Schaffer, in the chair.
The CHAIRMAN. The hour fixed for the meeting of the commission having arrived, the commission will be in order.

ROLL CALL.

The roll was called by the secretary and was as follows:

PRESENT—21.

Alter, Carson, Connelly, English, Fisher, Fox, Gordon, Kelly, McCormick, Miller, Munce, Pierrine, Pinchot, Smith, Stackpole, Stevens, Thorpe, Tyson, Voll, Warburton, Schaffer (Chairman).

ABSENT—4.

Cuyler, Pepper, Reed, Sulzberger.

The CHAIRMAN. A quorum of the commission being present, the commission will proceed with its business.

JOURNAL APPROVED.

Mrs. WARBURTON. Mr. Chairman: I move that the reading of the journal be dispensed with and the journal approved.
Mr. McCORMICK. Mr. Chairman: I second the motion.
The motion was agreed to.

TIME OF NEXT MEETING.

Mr. FISHER. Mr. Chairman: During the hearings a great many suggestions have been made to the commission and a good many new amendments submitted for consideration. Those amendments have not been available for the consideration of the members of the commission as yet, and will not be for perhaps a few days to come. In view of this situation, I move that when we adjourn this week it be to meet on Tuesday, May 4, 1920, at 11.30 o'clock A. M.
Mr. CARSON. Mr. Chairman: I second the motion.
On the question,
Will the Commission agree to the motion?
Mr. VOLL. Mr. Chairman: I am wondering if Senator Fisher cannot change that date. I cannot be here on May 4th or during that week, because, in our dealings with employers we are to have a preliminary conference to take up matters relative to wages, hours, and so on, and that week is the time we meet. If Senator Fisher could see his way clear to change that date to some other date, it would please me very much.
Mr. FISHER. Mr. Chairman: I have no definite object in mind in mentioning the date, and want to defer to the wishes of the majority of the commission. If some other date will suit just as well, it will be agreeable to me personally. I would suggest that Mr. Voll put his suggestion in the form of an amendment, and the members of the commission can then express their wishes.
Mr. VOLL. Mr. Chairman: I move to amend by substituting May

11th instead of May 4th, if that will not interfere with too many of the other members who are here.

Mr. KELLEY. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the Commission agree to the motion as amended?

It was agreed to.

PREPARATION OF CALENDARS.

The CHAIRMAN. The Chair would suggest that it might be advisable for the secretary to have calendars prepared as soon as possible, containing the suggested amendments and propositions that have come before the commission during the arguments that have been made, or otherwise, or of tentative drafts of sections, so that each member of the commission, in advance of coming here on May 11th, will have an opportunity to study the various propositions that have come before the commission. Unless there is objection, the chair will instruct the secretary to that effect.

The chair hears no objection, and the secretary will be instructed to prepare calendars and mail copies to each member of the commission in advance of the meeting on May 11th.

SUGGESTED AMENDMENTS.

The CHAIRMAN. The secretary suggests that if any members of the Commission have anything to offer by way of alterations or amendments to the tentative draft, he would like to have them in his hands not later than Saturday of this week, in order that the calendars may be made up and printed.

MEETING OF MAY 11th.

The CHAIRMAN. If the chair may express another thought, it is his belief that if we hold continuous sessions, say, Tuesday, Wednesday and Thursday of the week of May 11th, we can dispose of all matters that are before the commission, and it would be advisable that the members of the commission should endeavor to make their engagements so that they could give those three days to an attendance of the sessions, in order that all matters might be disposed of, because by the week of May 11th, we will be pretty well towards the summertime.

COMMISSION TO VISIT SCRANTON.

Mr. THORPE. Mr. Chairman: During our proceedings last week it was agreed that a committee should visit the city of Scranton to view the mine-cave situation. I move that instead of a committee going there the Commission as a whole shall go, and I will give my reasons for it if desired. Of course, any members who cannot go will not be expected to do so. I move, therefore, that the commission as a whole shall visit the city of Scranton, instead of the committee, the appointment of which was authorized.

Mr. PINCHOT. Mr. Chairman: As the mover of the motion for which Dr. Thorpe's motion is a substitute, I gladly second the motion.

The motion was agreed to.

AMENDMENTS PROPOSED AND REFERRED.

The CHAIRMAN. The chair lays before the commission certain suggested amendments which have been recommended by Mr. Justice Simpson and others.

The secretary read the proposed amendments as follows:

Amend section 1 of article V to read as follows:

Section 1. The judicial power of this commonwealth shall be vested in a supreme court, a superior court, in courts of common pleas, courts of oyer and terminer and general jail delivery, courts of quarter sessions of the peace, orphans' courts, and such other courts as the general assembly may from time to time establish.

Amend section 1 of article V to read as follows:

Section 1. The judicial power of this commonwealth shall be vested in a supreme court, one or more superior courts, in courts of common pleas, criminal courts, courts of quarter sessions of the peace, orphans' courts, and in such other courts as the general assembly may from time to time establish.

Amend section 2 of article V to read as follows:

Section 2. The supreme court shall consist of seven judges learned in the law, who shall be elected by the qualified electors of the state at large. They shall hold their offices for the term of twenty-one years, if they so long behave themselves well, but shall not be again eligible.

Note. This amendment to be inserted if amendment of section 17 of article V, providing for chief justice and president judge, shall be approved.

Amend section 2 of article V by adding at the end thereof the following:

They shall also have the exclusive right and power to change from time to time the practice and procedure in the several courts of the commonwealth by duly promulgated rules applicable to all courts of the same class or grade, the individual courts retaining, however, the right to adopt and enforce other rules not inconsistent therewith.

Amend section 3-A of article V to read as follows:

Section 3-A. The superior court or courts shall each consist of not less than seven judges learned in the law, who shall be elected by the qualified electors of the state at large. They shall hold their office for the term of sixteen years, if they so long behave themselves well, and shall not be eligible for re-election. The judge of each court oldest in commission shall be president judge.

Note. To be adopted if amendment to section 1 of article V, providing for more than one superior court, be approved.

Amend first paragraph of section 4 of article V to read as follows:

The court of common pleas in each judicial district shall consist of such judge or judges learned in the law as the legislature may determine are required in the particular district. These judges shall be elected by the qualified electors of the district. They shall hold office for a term of ten years, if they so long behave themselves well; but for any reasonable cause, which shall not be sufficient ground for impeachment, the governor may remove any of them on the address of two-thirds of each house of the general assembly. Not more than four counties shall, at any time, be included in one judicial district organized for said courts.

Note. This amendment to be inserted if amendment of section 17 of article V, providing for chief justice and president judge, shall be approved.

Substitute for section 6 of article V as it now reads the following:

Section 6. On and after the first Monday of January following the adoption of this Constitution there shall be but one court of common pleas in each judicial district of the commonwealth, which shall consist of all the judges of the present courts of common pleas then therein and of their successors in office, but the number of judges in any of said courts from time to time may be increased or decreased as provided by law. Each of the said courts shall have all the jurisdiction and powers now or hereafter vested in the courts of common pleas, subject to such changes as may be made by law, and shall have the control and disposition of all proceedings now pending or hereafter begun in the courts of common pleas of said district, subject to changes of venue as provided by law. In courts containing more than one judge the board of judges shall from time to time in turn detail the judges to hold the criminal courts in said judicial district.

Insert in lieu of section 12 of article V as it appears in the tentative draft the following:

Section 12. Until the general assembly shall otherwise provide, in Philadelphia there shall be established for each thirty thousand inhabitants one court not of record of police and civil causes with jurisdiction not exceeding one hundred dollars; such courts shall be held by magistrates whose term of office shall be six years, and they shall be elected on general ticket at the municipal election by the qualified voters at large; and in the election of the said magistrates no voter shall vote for more than two-thirds of the number of persons to be elected when more than one are to be chosen; they shall be compensated only by fixed salaries to be paid by said county, and shall exercise such jurisdiction, civil and criminal, except as herein provided, as is now exercised by aldermen, subject to such changes, not in-

volving an increase of civil jurisdiction or conferring political duties, as may be made by law. In Philadelphia the office of alderman is abolished.

Note. The purpose of this amendment is to continue the magistrates' courts as they now exist in Philadelphia until such time as the legislature shall provide a new minor judiciary for that city.

Insert in lieu of section 17 of article V the following:

Section 17. The justice or judge oldest in continuous service shall be the chief justice or president judge of each court; he shall preside over the deliberations of the court, but neither he nor any other judge shall have or exercise any of the powers or privileges except in common with all the other members of the court. If two or more justices or judges, not then members of a court, are elected or appointed at the same time, they shall draw lots for priority of commission and shall certify the result to the Governor, who shall issue their commissions accordingly.

Amend section 21 of article V to read as follows:

Section 21. The judges of each court shall appoint their prothonotary, clerks, except register of wills, criers and tipstaves, and such trustees, guardians, depositories, masters, examiners, auditor, receivers and other officers as shall be needed to administer the estates over which they have control, or to transact pending litigation; but from and after the adjournment of the first session of the legislature following the adoption of this Constitution they shall make no other appointments and perform no other duties except such as are judicial.

Amend section 21 of article V to read as follows:

Section 21. No duties shall be imposed upon any judge except such as are judicial. The general assembly shall enact such legislation as is necessary to transfer the appointing power to nonjudicial offices or not connected with the county or their administration.

The CHAIRMAN. These proposed amendments will be referred to committee No. 2.

The chair also lays before the commission a further suggested amendment.

The secretary read the proposed amendment as follows:

Amend section 7 of article VIII so as to read as follows:

Section 7. All laws regulating the holding of elections by the citizens or for the registration of electors shall be uniform throughout the state, but laws regulating and requiring the registration of electors may be enacted to apply to cities and boroughs only; provided, that such laws be uniform for cities and boroughs of the same class.

The CHAIRMAN. This proposed amendment will be referred to committee No. 3.

The chair also lays before the commission these further suggested amendments.

The secretary read the proposed amendments as follows:

Amend section 5 of article IX to read as follows:

Section 5. All laws authorizing the borrowing of money by and on behalf of the state or of any municipality shall specify the purpose for which the money is to be used, and the money so borrowed shall be used for the purpose specified and no other.

Amend section 6 of article IX to read as follows:

Section 6. Neither the credit of the commonwealth or that of any municipality shall be pledged or loaned to any individual, company, corporation or association, nor shall the commonwealth or any municipality become the agent of or a stockholder in any company, association or corporation, but a lease by a municipality for a public service facility owned by it shall not be construed to violate the provisions of this section, although the principal consideration for the lease is the covenant of the lessee to use the facility under regulations protective of the public interest, or because the provision for a pecuniary return of the lessor is made contingent upon the earnings of the lessee's entire system.

Amend section 9 of article IX to read as follows:

The commonwealth shall not assume the debt, or any part thereof, of any municipality unless such debt shall have been contracted to enable the state to repel invasion, suppress domestic insurrection, defend itself in time of war, or to assist the state in the discharge of any portion of its present indebtedness.

Amend section 1 of article XVI by adding at the end thereof the following:

And the charters of business corporations which for a period of five years failed to make a return of and pay a state tax shall be deemed forfeited.

Amend section 7 of article XVI by adding at the end thereof the following:

The general assembly may empower corporations to issue stock without nominal or par value.

Amend section 9 of article XVI to read as follows:

Section 9. The general assembly shall have the power by general law to provide for the incorporation of banks and trust companies and to prescribe the powers thereof. Every banking law shall provide for the registry and countersigning by an officers of the state of all notes or bills designed for circulation, and that ample security of the full amount thereof shall be deposited with the Auditor General for the redemption of such notes or bills.

Note. This consolidates section 11 of the same article.

Amend article XVII by adding the following as section 2-B:

Section 2-B. No street passenger railway shall be constructed within the limits of any city, borough or township without the consent of its local authorities; provided, that nothing in this Constitution shall be so construed as to restrict the police power of the state over the operation of public utilities.

Note. This consolidates section 17 of article on municipalities.

Amend article XVII by striking out section 11 in its entirety, if the consolidating amendment to section 9 be approved.

The CHAIRMAN. These proposed amendments will be referred to committee No. 4.

The chair also lays before the commission these further suggested amendments.

The secretary read the proposed amendments as follows:

Amend section 2 of the article on municipalities to read as follows:

Section 2. The general assembly may provide by general law only for the creation, division and change of boundaries of municipalities.

Amend section 10 of the article on municipalities to read as follows:

Section 10. The compensation of county officers shall be regulated by law, and all fees or other compensation which county officers may be authorized to receive shall be paid into the treasury of the county or state as may be directed by law.

All county officers shall be paid only by salary for services performed for the county, state or any political subdivision of either, or for any other official service.

Amend section 13 of the article on municipalities to read as follows:

Section 13. County officers shall consist of sheriffs, coroners, registers of wills, recorders of deeds, commissioners, treasurers, surveyors, auditors or controllers, district attorneys, and such others as may from time to time be established by law, and no sheriff or treasurer shall be eligible for the term next succeeding the one for which he may be elected.

Note. This amendment to be adopted only in the event that the amendment to section 21 of article V, authorizing courts to appoint prothonotaries and clerks of the courts, be approved.

Amend article on municipalities by striking out section 17, if the consolidating amendment to section 2-A of article XVII be approved.

Amend section 18 of article on municipalities to read as follows:

Section 18. The general assembly by general law may authorize assessments against all properties, whether abutting or not, which are particularly benefited by the construction, enlargement, laying out, widening, grading or other improvement of public highways, parks, buildings or other public works by the state or any municipality thereof.

Amend the article on municipalities by striking out section 21, if the amendment to article 6 of article IX, consolidating the two sections, be approved.

The CHAIRMAN. These proposed amendments will be referred to the special committee on local government.

PUBLIC HEARINGS.

Robert P. Shick, representing the Constitutional Club of Philadelphia addressed the commission in public hearing on the subject of Court Organization.

RECESS.

Mr. FISHER. Mr. Chairman: I move that the commission do now take a recess until 2.30 o'clock P. M.

Mrs. MILLER. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 1.10 o'clock P. M., the commission took a recess until 2.30 o'clock P. M.

AFTER RECESS.

The Commission reconvened at 2.30 o'clock P. M.

The Chairman, William I. Schaffer, in the chair.

The CHAIRMAN. The hour fixed for the reconvening of the commission having arrived, the commission will be in order.

PUBLIC HEARINGS.

The following persons addressed the commission in public hearing on the following subjects:

Robert P. Shick, Esq. (continuing)—Court Organization.

Dr. Thomas E. Finegan, Superintendent of Public Instruction—Education.

Dr. S. B. McCormick, Chancellor of the University of Pittsburgh—Education.

Bruce M. Watson, representing the Pennsylvania Education and Child Labor Association—Education.

Hon. Charles A. Snyder, Auditor General of Pennsylvania—Education.

Dr. Frank P. Graves, of the School of Education of the University of Pennsylvania—Education.

Dr. W. D. Chambers, Dean of the School of Education of the University of Pittsburgh and President of the State Educational Association—Education.

William S. Jenny, Esq., General Counsel of the Delaware, Lackawanna and Western Railroad Company—Scranton Mine-caves.

Mayor Connell, of Scranton—Scranton Mine-caves.

RECESS.

Mr. STEVENS. Mr. Chairman: I move that the commission do now take a recess until 8 o'clock P. M.

Mr. ALTER. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 6.10 o'clock P. M., the commission took a recess until 8 o'clock P. M.

AFTER RECESS.

The commission reconvened at 8 o'clock P. M.

The Chairman, William I. Schaffer, in the chair.

The CHAIRMAN. The hour fixed for the reconvening of the commission having arrived, the commission will be in order.

PUBLIC HEARINGS.

The following persons addressed the commission in public hearing on the following subjects::

Franklin Spencer Edmonds, Esq., of Philadelphia—Article XVIII, Future Amendments.

Dr. J. H. Dunham, Dean of Temple University—Education.

Dr. Harlan Updegraff, of the University of Pennsylvania—Education.

ADJOURNMENT.

Mr. ALTER. Mr. Chairman: I move that the commission do now adjourn until tomorrow morning at 10 o'clock.

Mr. FOX. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 10.30 o'clock P. M., the commission adjourned until 10 o'clock tomorrow morning.

Senate Chamber,

Wednesday, April 21, 1920.

The commission met at 10 o'clock A. M.

The Chairman, William I. Schaffer, in the chair:

The CHAIRMAN. The hour fixed for the meeting of the commission having arrived, the commission will be in order.

ROLL CALL

The roll was called by the secretary and was as follows:

PRESENT—16.

Alter, Carson, Connelly, Fisher, Fox, Gordon, Kelly, McCormick, Miller, Munce, Perrine, Pinchot, Stackpole, Stevens, Thorpe, Schaffer (Chairman).

ABSENT—9.

Cuyler, English, Pepper, Reed, Smith, Sulzberger, Tyson, Voll, Warburton.

The CHAIRMAN. A quorum of the commission being present, the commission will proceed with its business.

JOURNAL APPROVED.

Mrs. MILLER. Mr. Chairman: I move that the reading of the journal be dispensed with and the journal approved.

Mr. MUNCE. Mr. Chairman: I second the motion.

The motion was agreed to.

RESOLUTION AUTHORIZING PREPARATION OF SYNOPSIS OF REMARKS AND BRIEFS ON THE SUBJECT OF COURTS.

Mr. KELLY. Mr. Chairman: I offer the following resolution and move its adoption.

The secretary read the resolution as follows:

Resolved, That the secretary be directed to prepare and submit in the form of a brief a synopsis of the remarks of Mr. James Collins Jones and of Mr. Reginald Heber Smith on the subject of courts, and a synopsis of the briefs submitted by Messrs. James Collins Jones and Owen J. Roberts.

Mr. STACKPOLE. Mr. Chairman: I second the motion.

The motion was agreed to.

RESOLUTION REQUESTING INFORMATION FROM SUPERINTENDENT OF PUBLIC INSTRUCTION.

Mr. GORDON. Mr. Chairman: I offer the following resolution and move its adoption.

The secretary read the resolution as follows:

Resolved, That the Superintendent of Public Instruction be respectfully requested, for the information of this Commission and to assist it in the performance of its duties, to advise it upon the following questions:

First. Are the facilities provided for the education of the children resident in any part of this commonwealth insufficient to give such education to all such children desiring and entitled by law to receive the same? If so, where does such insufficiency exist, and what official agency is responsible for such default?

Second. Are the provisions of law providing for compulsory education of children in this commonwealth neglected, ignored or violated in any part thereof? If so, where does such default occur, and what official agency is responsible therefor?

Mr. McCORMICK. Mr. Chairman: I second the motion.

On the question,

Will the Commission agree to the motion?

Mr. GORDON. Mr. Chairman: The discussion last evening suggested, if it did not actually accuse, that this commonwealth is guilty of grave default in providing for the education of the children of the commonwealth, as commanded in the constitution. I should like to have that subject clarified either by proof of its truth or its denial and refutation from the only official competent to do it. I therefore think that the superintendent of public instruction ought to be asked to advise us on these matters.

On the question recurring,

Will the commission agree to the motion?

It was agreed to.

PUBLIC HEARINGS.

The following persons addressed the commission in public hearing on the following subjects:

E. A. Forst, of Uniontown, representing the Poster Advertising Association—Advertising.

Mark K. Edgar, of Scranton—Mine-caves.

Hon. George Woodward, of Philadelphia—Organization of State Government.

Hon. Allan D. Miller, of Susquehanna—General discussion of preliminary draft.

RECESS.

Mr. FISHER. Mr. Chairman: I move that the commission do now take a recess until 2.30 o'clock P. M.

Mr. McCORMICK. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 1 o'clock P. M., the commission took a recess until 2.30 o'clock P. M.

AFTER RECESS.

The Commission reconvened at 2.30 o'clock P. M.

The Chairman, William I. Schaffer, in the chair.

The CHAIRMAN. The hour fixed for the reconvening of the commission having arrived, the commission will be in order.

PUBLIC HEARINGS.

The following persons addressed the commission in public hearing on the following subjects:

Mr. Fred Brenckman—general discussion of the preliminary draft.

George W. Woodruff—Canals and Waterways.

John G. McSparran, representing the Pennsylvania State Grange—general discussion of the preliminary draft.

ADJOURNMENT.

The CHAIRMAN. Under the resolution adopted at yesterday's session, the commission will now stand adjourned until Tuesday, May 11, 1920, at 11.30 A. M., with the understanding that the secretaries will prepare a complete calendar of all suggestions that have been made, and will mail copies of this calendar to the individual members of the commission as long prior to the meeting on May 11th as possible. The understanding is that the commission will meet on May 11th, and will be in session on Tuesday, Wednesday and Thursday of that week. We hope that with the preliminary study that will be given to the various amendments we can act on all of them on those days.

Whereupon, at 4.05 o'clock P. M., the commission adjourned until Tuesday morning, May 11, 1920, at 11.30 o'clock.

Senate Chamber,

Tuesday, May 11, 1920.

The Commission met at 11.30 o'clock A. M.

The Chairman, William I. Schaffer, in the chair.

The CHAIRMAN. The hour fixed for the meeting of the commission having arrived, the commission will be in order.

ROLL CALL.

The CHAIRMAN. The secretary will now call the roll.

The roll was called by the secretary and was as follows:

PRESENT—20.

Carson, Connelly, English, Fisher, Fox, Gordon, Kelly, McCormick, Miller, Munce, Pepper, Pinchot, Reed, Stackpole, Stevens, Thorpe, Tyson, Voll, Warburton, Schaffer (Chairman).

ABSENT—5.

Alter, Cuyler, Perrine, Smith, Sulzberger.

The CHAIRMAN. A quorum of the commission being present, the Commission will proceed with its business.

JOURNAL APPROVED.

Mrs. MILLER. Mr. Chairman: I move that the reading of the journal be dispensed with and the journal approved.

Mr. MUNCE. Mr. Chairman: I second the motion.

The motion was agreed to.

Mr. CARSON. Mr. Chairman: I should like to have the privilege of presenting the suggestions of the special committee appointed by the Law Association of Philadelphia when the proper time comes, sir. I am having copies made and should like to have the right to introduce them for the consideration of the commission at large.

The CHAIRMAN. Leave is granted.

Mr. THORPE. Mr. Chairman: There has been a suggested amendment sent in by the Bishop of Pittsburgh, which I think has been distributed to the commission. What is the proper manner in which that should be brought in? Just simply report it, is that it?

The CHAIRMAN. It would seem so to the chair. What is the amendment?

Mr. THORPE. Mr. Chairman: It is an amendment touching the use of passes on railroads for clergymen and persons engaged in religious pursuits and it is suggested as an amendment to article XVII, I think.

The CHAIRMAN. I suppose it violates the constitution of the United States?

Mr. THORPE. Mr. Chairman: I think a copy was sent to Dr. Lewis. The reason I present it is I had a little note from the Bishop asking that I see to it that it is presented to the attention of the commission.

The CHAIRMAN. It will come up in due order.

TENTATIVE DRAFT RE-REFERRED TO COMMITTEE OF THE WHOLE.

Mr. FISHER. Mr. Chairman: I offer the following resolution and move its adoption.

The Secretary read the resolution as follows:

Resolved, That the tentative draft reported by the Committee of the Whole, together with the suggested amendments thereto, be referred back to the Committee of the Whole for consideration and further report.

Mr. THORPE. Mr. Chairman: I second the motion.

The motion was agreed to.

Mr. FISHER. Mr. Chairman: I offer the following resolution and move its adoption.

The Secretary read the resolution as follows:

Resolved, That the Commission now go into Committee of the Whole for further consideration of the tentative draft and the suggested amendments thereto.

Mr. THORPE. Mr. Chairman: I second the motion.

The motion was agreed to.

The chair lays before the commission certain suggested amendments submitted by Judge Kennedy, president judge of the courts of Allegheny county.

Also certain amendments suggested by the Allied Boards of Trade of Allegheny county.

Also certain information furnished to the commission by the Public Charities Association of Pennsylvania.

Also certain amendments suggested by Judge Brown, president judge of the municipal court of Philadelphia.

Also certain amendments suggested by the council of the city of Pittsburgh, providing that municipalities may levy a license tax on motor vehicles.

Also memorandum prepared by Mr. Shick.

Also the invitation of the Hotel Casey, of Scranton, to make the Hotel Casey headquarters when the commission visits Scranton.

All of which will take the regular course through the secretary's office.

COMMITTEE OF THE WHOLE.

The commission then resolved itself into the committee of the whole, William I. Schaffer, Chairman.

The CHAIRMAN. The committee of the whole will now resume the consideration of the tentative draft and suggested amendments.

If there is nothing else to come before it, the committee of the whole will proceed to the consideration of the suggested amendments which have developed out of the public hearings that have been held, all of which are found on the calendar which has been prepared by the secretary.

It is obvious that to dispose of this calendar during this week's session will be a work of some magnitude, but I think if we keep right down to it, it can be accomplished. The chair will rule that none of these amendments are before the committee of the whole unless they are sponsored from the floor. That is, there must be a mover and seconder for each amendment; if there is not a mover and a seconder for each amendment on the calendar, the ruling of the chair will be that it is not before the committee of the whole, because they are merely in the form of suggestions.

The chair would also like to suggest, with the thought of economy of time, that members of the commission shall not move the adoption of sections which they do not personally favor just to bring them out on the floor, because, if there is not a mover and a seconder, of course, there will be no vote for it, and if it is just moved as a matter of routine to bring it out on the floor and the mover does not have faith in the proposition itself, it is simply a waste of time to have it brought out, so that the chair will rule that amendments that are not sponsored from the floor will not be considered and will be dropped.

Mr. CARSON. Mr. Chairman: I am going to ask for information, sir, in view of what you have said, that unless there is a motion from the floor, a responsible mover and seconder, the proposition cannot come before the Commission at large, and that nobody ought to make such a motion unless he is personally in favor of it. Suppose he happens to be chairman of a committee where the sentiment of the committee is in favor of the proposition, but the chairman himself entertains a different view?

The CHAIRMAN. I think then he could move it as the chairman of the committee, stating that he makes the motion because that is the judgment of the committee that is behind him. That will be a different proposition.

Mr. CARSON. Mr. Chairman: Then that does not bind the chairman of the committee to an individual pledge in support of something for which he moves the adoption?

The CHAIRMAN. It will not, sir.

ARTICLE I, SECTION 1.

The committee of the whole proceeded to the consideration of section 1 of article I and suggested amendment.

The secretary read the section and amendment submitted by the secretary as follows:

Section 1. Natural Rights of Mankind.

1 All men are born equally free and independent, and have certain inherent and
2 indefeasible rights, among which are those of enjoying and defending life and
3 liberty, of acquiring, possessing and protecting property and reputation, and of
4 pursuing their own happiness.

Amend by adding at the end thereof the following: *and no person shall be deprived of life, liberty or property without due process of law.*

Mr. REED. Mr. Chairman: I move to amend the tentative draft of article I as it is in the tentative draft, article I as it stands now in the old Constitution.

Mr. THORPE. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. REED. Mr. Chairman: It seems to me there have been so many suggestions, some of which we will have to take up, that seriously I feel the Bill of Rights ought to be left alone. That is our easiest way out of it. That includes the preamble to article I.

The CHAIRMAN. The motion is that article I of the present constitution and all sections thereof shall be readopted in the draft of the constitution now being prepared. This would dispose of the entire calendar, as the chair sees it, down to and including page 6 of the calendar.

Mr. CARSON. Mr. Chairman: I should like to call Judge Reed's attention to the fact that if his motion prevails the amendment suggested on page 2 of the calendar, section 5-A, on the right to vote, in which the right to vote is extended to women, would be negatived and fall.

Mr. REED. Mr. Chairman: All that comes under the head of elections.

Mr. CARSON. Mr. Chairman: No, sir; it is reported on page 3.

Mr. REED. Mr. Chairman: But if you will turn to the article on elections you will find that it is provided for there.

Mr. CARSON. Mr. Chairman: I am only calling attention to it. There are two suggestions made there, that the right to vote and to hold office shall not be denied on account of race, color or sex. The subsequent suggestion at the foot of the page is that that right should be extended to the holding of place on juries. Or you can consolidate those two suggestions by simply inserting the words in the first line of section 5-A "the right to vote, to hold office or to serve as juror in this commonwealth shall not be denied on account of race, color or sex." Then you would cover all three in a very concise way.

The CHAIRMAN. The Supreme Court of the United States in Neill vs. Delaware held that the qualification made by the word "white" in the Delaware constitution fell out of the Delaware constitution as a result of the adoption of the fifteenth amendment, that it carried with it a qualification to sit on juries. That being true, it would seem that the same thing would apply so far as the eighteenth amendment was concerned, and that the word "male" if that is the qualifying word so far as the right to serve on juries in Pennsylvania is concerned, would drop out likewise, following the ruling of the supreme court in Neill vs. Delaware. But this whole question of the

right to vote is covered, as I understand Judge Reed's thought, in the article on elections.

Mr. REED. In article VIII, yes.

The CHAIRMAN. And this suggestion to amend the Bill of Rights in that respect is simply a repetition of what we already covered in article VIII.

Mr. REED. Mr. Chairman: I have not, sir, any desire to interfere with the cherished right of the women voters today to sit on juries or act as constable, or any thing else they want to do; but it seems to me the whole purpose of this suggestion is that we either ought to adopt the Bill of Rights in the old constitution as it stands and get rid of these suggestions, or, if you do not, you must take up these suggestions, some of which have been erroneously made, such as disqualification on account of disbelief in God or future punishments. I think the Bill of Rights ought not to be disturbed unless for good reasons. It is supposed to be a permanent feature of the constitution, and you will remember, Mr. Chairman, that the Convention of 1873 was expressly limited and prohibited from interfering with the Bill of Rights. Of course, as soon as they got into office they proceeded to interfere with it to some limited extent. That is all I had in mind, there is nothing ulterior in it.

Mr. CARSON. Mr. Chairman: I do not want to be captious at all, sir, but it seems to me that the privileges in the Bill of Rights ought to be extended to women.. It ought not to rest on the construction by courts of other instruments. It is true, as the chairman has announced, that the Supreme Court of the United States, in construing some other instrument, by interpretation suggested that the language was broad enough to carry with it the privilege; but the constitution of Pennsylvania was not before the court at that time, and that has been agitated now quite decidedly, and I very much fear that if that specific suggestion occurring on page 2 should be denied and the Bill of Rights simply as it now stands in the constitution re-enacted without change it might lead to some criticism, as you need an explicit statement of what you admit by construction exists. I cannot see any harm which would result from the amendment of the Bill of Rights by some such sentence as the following: "The right to vote, to hold office or to serve as juror in this commonwealth shall not be denied on account of race, color or sex." I would move to amend Judge Reed's motion to that extent, and to that extent only.

The CHAIRMAN. Then we have to recast the section certainly, because we do not want to repeat the language in the constitution.

Mr. CARSON. Mr. Chairman: That would go to the committee on style.

Mr. REED. Mr. Chairman: May I ask whether the right to act as juror is a constitutional right or the subject of statute?

The CHAIRMAN. No, sir, it is not a constitutional right.

Mr. REED. Mr. Chairman: That is what I thought. Unless the right to vote is conferred on women, the legislature has the right to say who shall be jurors.. Is that not right?

The CHAIRMAN. That is as the chair understands the law. There is nothing in the constitution on the question of jurors, and the right to serve on the jury is a legislative provision, of course.

Mr. CARSON. Mr. Chairman: That part of it I am willing to withdraw, I was only consolidating two thoughts.

The CHAIRMAN. This occurs to the Chair: We ought not to put into the constitution anything that was incorporated in the fifteenth amendment, as a part of the Bill of Rights, because that became the supreme law of the land, and all state constitutions went down in front of it if they differed with it. Now, does not the same thing happen with the eighteenth amendment, that all state constitutions and all state laws go down in front of the eighteenth amendment if they are not in consonance with it?

Mr. CARSON. Mr. Chairman: That is true as a question of construction, but as a declaration of principle—

The CHAIRMAN. I am not opposed to the declaration as a principle. I am only interested that we shall have an harmonious document here that will not repeat in one section something that has already been covered in another section.

Mr. CARSON. Mr. Chairman: I call for a vote on my motion, only I modify it by striking out the word "or to serve as juror."

Mr. REED. Mr. Chairman: Article VIII provides for everything that Mr. Carson suggests.

The CHAIRMAN. Is Mr. Carson's amendment seconded?

Mr. PINCHOT. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. FOX. Mr. Chairman: Why not take our tentative draft of article I and adopt it?

Mr. REED. Mr. Chairman: My answer to that is that there have been several suggestions modifying section 5-A. There are suggestions in regard to other sections. Either we ought to adopt article I in its entirety or we ought to take up and treat seriously the suggestions that have been made by way of amendments, and I was taking the easiest way out.

The CHAIRMAN. The parliamentary situation is this; the tentative draft as adopted contains a provision, section 5-A, "The right to vote and hold office in this commonwealth shall not be denied on account of race, color or sex" which is new; and therefore it seems that unless we are going to undo the tentative draft in that respect it should stand as already adopted.

Mr. REED. Mr. Chairman: My motion was to undo it, sir, and substitute, because I do not see, if you once get away from the constitution of 1873, how you are going to avoid taking up some of these other questions which have been presented here with a great deal of earnestness.

Mr. PINCHOT. Mr. Chairman: What you said a moment ago was the question I wanted to raise. As I understand it, we have already adopted section 5-A, and Judge Reed's motion was to eliminate that; in other words, to go back on what you have already adopted and to leave the whole of article I as it was in the original constitution of 1873. I want to say a word, first, as to the sex question, and then as to the general method of handling this thing. It seems to me it would be a most serious mistake, after having inserted in the Bill of Rights that we believe women ought to vote, to take it out of this permanent part of the constitution; it would be a very serious mistake for a great many reasons. In the second place, I would like to suggest that this constitution which we are making is liable to be

effective for a long time. We have held hearings in which we had people from all over the state present amendments which seemed to them to be important, and I question the wisdom of throwing overboard in a single motion everything that we did in our first construction of article I and everything that was presented to us.

Mr. VOLL. Mr. Chairman: I would like to inquire of Judge Reed, if he would care to give the information, what the ojbections are to the tentative draft made by the commission.

Mr. REED. Mr. Chairman: I have said two or three times that I am not trying to strike out of the tentative draft that provision or play any tricks on anybody, but I do say that if you are going to swing away from the Bill of Rights in the present constitution, then I do not see how you can avoid taking up every suggestion that has been made here and treating it seriously.

Mr. PINCHOT. Mr. Chairman: Why should you not do so?

Mr. VOLL. Mr. Chairman: It seems to me that is the very purpose of this commission. If it was not the purpose of the people of the state of Pennsylvania to make some changes in the constitution we would not be here by appointment of the Governor, and if we simply came here for ratification of the old constitution, there would not have been any necessity on our part to have gone all over the constitution and make the changes that have been made up to the present time.

Mr. THORPE. Mr. Chairman: This section 5-A, if I remember correctly, I had the honor to submit after conference with the parties interested, and I would like to raise the question, Mr. Chairman, whether if this were omitted entirely there would be any doubt of the right of a woman to serve as juror or to hold office. Is that coupled in some other provision of the constitution and mere surplusage here? If it is not necessary here it might just as well be dropped. Let that be freely discussed and made known.

The CHAIRMAN. If that is an inquiry directed to the chair, the chair's thought is that this language ought to be in the constitution somewhere, and whether in article VIII or in the Bill of Rights, I do not think makes very much difference. That is a matter for the committee on style. That is the chair's thought about it.

Mr. REED. Mr. Chairman: I do not object when you come to article VIII to reinsert that provision.

On the question recurring,

Will the committee agree to the amendment?

It was agreed to.

On the question,

Will the committee agree to the motion as amended?

Mr. REED. Mr. Chairman: I desire to withdraw that motion, and I now move that we take up seriatim the various suggestions that have been made to article I.

The CHAIRMAN. The motion of Judge Reed is withdrawn and the Chair hears no objection and we will proceed to the regular consideration of the calendar.

Mr. FOX. Mr. Chairman: I renew Judge Reed's motion.

The CHAIRMAN. The chair has ruled that any suggested amendment, if not moved and seconded from the floor, will not be considered, because it is on the calendar simply as a tentative suggestion. If we go through the calendar in regular order we will strike that.

Mr. FOX. Mr. Chairman: I cannot understand why Judge Reed's motion should not be entertained.

Mr. McCORMICK. I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. REED. Mr. Chairman: I certainly agree with Mr. Voll that we are here to discuss these things and not to pass them by. People from all over the state have sent us suggestions, and some of them have taken the trouble to come here with their suggestions, and I think they should be treated respectfully. I move as a substitute for Judge Fox's motion the taking up of the first suggestion, which I believe was made by the secretary to section 1, and considering it.

Mr. PEPPER. Mr. Chairman: I second the motion.

The motion was agreed to.

The secretary again read the section and amendment submitted by the secretary as follows:

Section 1. Natural Rights of Mankind.

1 All men are born equally free and independent, and have certain inherent and
2 indefeasible rights, among which are those of enjoying and defending life and
3 liberty, of acquiring, possessing and protecting property and reputation, and of
4 pursuing their own happiness.

Amend by adding at the end thereof the following: *and no person shall be deprived of life, liberty or property without due process of law.*

Mr. CARSON. Mr. Chairman: I move the adoption of the amendment.

Mr. REED. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. CARSON. Mr. Chairman: I do not want to debate it, sir, but those words are taken from Magna Charta, they are particularly applicable to existing conditions, and I can see no reason why they should not be added to that section, because I cannot find them anywhere; they are intimated at but they are not found in express terms in any other part of the constitution.

On the question recurring,

Will the committee agree to the motion?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE I, SECTION 4.

The committee of the whole proceeded to the consideration of section 4 of article I and suggested amendments.

The secretary read the section and amendment submitted in writing by the Civic Club of Allegheny County, Pittsburgh, Pa., as follows:

Section 4. No Disqualification for Religious Belief.

1 No person who acknowledges the being of a God and a future state of rewards
2 and punishments shall, on account of his religious sentiments, be disqualified to
3 hold any office or place of trust or profit under this commonwealth.

Strike out on lines 1 and 2 the words [who acknowledges the being of a God and a future state of rewards and punishments].

This amendment was not called up.

The secretary read the amendment submitted in writing by John Thiel, Esq., of Philadelphia, Pa., and by William J. Fitzgerald, of Scranton, Pa., as follows:

Strike out on lines 1 and 2 the words [and a future state of rewards and punishments].

Mr. REED. Mr. Chairman: I move the adoption of the suggested amendment.

Mr. PINCHOT. Mr. Chairman: I second the motion.

The motion was not agreed to.

The secretary read the amendment submitted in writing by Hon. R. H. Koch, judge of the common pleas court, Pottsville, Pa., as follows:

Strike out on line 1 the article [a] before the word "God" and substitute therefor the word *Almighty*.

The amendment was not called up.

ARTICLE 1, SECTION 5-A.

The committee of the whole proceeded to the consideration of section 5-A of article 1 and suggested amendments.

The secretary read the section and amendment submitted in writing by the Civic Club of Allegheny County, Pittsburgh, Pa., as follows:

Section 5-A. Right to Vote.

1 *The right to vote and to hold office in this commonwealth shall not be denied on*
2 *account of race, color or sex.*

Substitute the following:

The right of citizens of Pennsylvania to vote shall not be denied or abridged on account of race, color or sex. Nothing in this Constitution shall be construed to deny to any citizen of Pennsylvania the right to hold any office or place of trust or profit on account of race, color or sex.

Mr. CARSON. Mr. Chairman: A careful reading of those four successive suggestions discloses that there is only a verbal difference and not a substantial difference at all, and what we have already voted into the Bill of Rights, section 5-A, on the right to vote and to hold office is already covered, and those words are absolutely unnecessary and add nothing to what has been so well expressed.

This amendment was not called up.

The secretary read the amendment submitted in writing to the Chairman as follows:

Substitute the following:

The right of an elector to hold office in this commonwealth shall not be denied providing he (or she) possesses the qualifications prescribed in its Constitution and laws.

This amendment was not called up.

The secretary read the section and amendment submitted in writing by the Legislative Reference Bureau, Harrisburg, Pa., as follows:

Amend by adding at the end thereof the words: *and all laws to the contrary now existing shall be construed to be amended in accordance herewith.*

Mr. PEPPER. Mr. Chairman: With regard to that I should like to raise the question before making any motion as to whether in your judgment, sir, or the judgment of the commission, there is a possibility that the declaration in section 5-A as we now have it might be construed as applicable only to future legislation. The provision is that "The right to vote and to hold office in this commonwealth shall not be denied." It occurs to me that there is a possibility that it might be contended that that declaration has no application to legislative denials that have taken place in the past and are still in force. Therefore I assume that that is the reason that

has led the Legislative Reference Bureau to propose that "and all laws to the contrary now existing shall be construed to be amended in accordance herewith." It seems to me that does raise a question of interpretation that is worthy of our serious consideration, and I will move, sir, the amendment to section 5-A as submitted in writing by the Legislative Reference Bureau be adopted.

Mr. FOX. Mr. Chairman: I second the motion.

The motion was agreed to.

The Secretary read the amendment suggested by the bar of Pittsburgh as follows:

Amend to read as follows: *Nothing in this Constitution shall be so construed as to render any citizen of Pennsylvania ineligible on account of sex to serve as juror on any jury, or to hold any office or place of trust or profit under this commonwealth. The right of citizens of Pennsylvania to vote shall not be denied or abridged on account of sex.*

The amendment was not called up.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE I, SECTION 6.

The committee of the whole proceeded to the consideration of section 6 of Article I, and suggested amendments.

The secretary read the section and amendment submitted in writing by the Civic Club of Allegheny County, Pittsburgh, Pa., as follows:

Section 6. Trial by Jury.

1 Trial by jury shall be as heretofore, and the right thereof remain inviolate.

Amend by adding at the end thereof the following: *Except in actions sounding in tort, the general assembly may enact laws providing that in all civil cases any party desiring a jury trial shall be required to pay in advance such fee as the general assembly may determine as a condition precedent to the right to have his case tried by jury.*

In all civil actions and in all criminal prosecutions except for treason, misprison of treason and felony, the general assembly may by law provide that the affirmative vote of nine traverse or petty jurors shall suffice to find any verdict.

This amendment was not called up.

The secretary read the amendment submitted in writing by H. K. Siebeneck, Esq., of Pittsburgh, Pa., as follows:

Amend by adding at the end thereof the following: *but in all civil actions except for torts the general assembly may enact laws regulating the payment of costs of securing jury trials.*

This amendment was not called up.

The secretary read the amendment submitted in writing by Thomas H. Greer, of Butler, Pa., as follows:

Amend by adding at the end of the section the words: *except that a vote of nine jurors shall be sufficient for a verdict.*

This amendment was not called up.

ARTICLE I, SECTION 7.

The committee of the whole proceeded to the consideration of section 7 of article I and suggested amendment.

The secretary read the section and amendment submitted in writing by Hon. R. H. Koch, judge of the common pleas court, Pottsville, Pa., as follows:

Section 7. Freedom of the Press.—Libel.

1 The printing press shall be free to every person who may undertake to examine
2 the proceedings of the legislature or any branch of government, and no law shall
3 ever be made to restrain the right thereof. The free communication of thoughts
4 and opinions is one of the invaluable rights of man, and every citizen may freely
5 speak, write and print on any subject, being responsible for the abuse of that
6 liberty. No conviction shall be had in any prosecution for the publication of
7 papers relating to the official conduct of officers or men in public capacity, or to
8 any other matter proper for public investigation or information, where the fact
9 that such publication was not maliciously or negligently made shall be established
10 to the satisfaction of the jury; and in all indictments for libels the jury shall
11 have the right to determine the law and the facts, under the direction of the
12 court, as in other cases.

Amend by striking from line 10 the word [indictments] and inserting in lieu thereof the word *prosecution*.

This amendment was not called up.

ARTICLE I, SECTION 9.

The committee of the whole proceeded to the consideration of section 9 of article I and suggested amendments.

The secretary read the section and amendment submitted in writing by Hon. R. H. Koch, judge of the common pleas court, Pottsville, Pa., as follows:

Section 9. Rights of Accused in Criminal Prosecutions.

1 In all criminal prosecutions the accused hath a right to be heard by himself
2 and his counsel, to demand the nature and cause of the accusation against him,
3 to meet the witnesses face to face to have compulsory process for obtaining wit-
4 nesses in his favor, and, in prosecutions by indictment or information, a speedy
5 public trial by an impartial jury of the vicinage; he cannot be compelled to give
6 evidence against himself, nor can he be deprived of his life, liberty or property,
7 unless by the judgment of his peers or the law of the land.

Amend by striking out from line 4 the words [indictment or].

This amendment was not called up.

The secretary read the amendment suggested by the Secretary as follows:

Amend by striking out all after the word "himself" line 7.

The CHAIRMAN. The secretary informs me this is a misprint. It was not submitted by him.

This amendment was not called up.

The secretary read the amendment submitted in writing by Richard E. Cochran, Esq., York, Pa., as follows:

Amend by inserting on line 5 after the word "vicinage" the words *except as provided in article VIII, section 10.*

Mr. CARSON. Mr. Chairman: I move the adoption of that amendment.

Mr. McCORMICK. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. CARSON. Mr. Chairman: This amendment seems to me to be a perfectly correct addition to make, only the word "except" should follow the semicolon which follows the word "vicinage" and not precede it.

The CHAIRMAN. The chair does not quite understand what the effect of that would be, Mr. Carson; maybe you have thought it out.

Mr. CARSON. Mr. Chairman: I read it over last night and it seems to me that Mr. Cochran was right in calling attention to the two articles, which might otherwise be in conflict with each other. Article VIII, section 10, to which Mr. Cochran calls attention, is to be found on page 39 of the preliminary draft, which reads "In

trials of contested elections and in proceedings for the investigation of elections, no person shall be permitted to withhold his testimony upon the grounds that it may criminate himself or subject him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceedings except for perjury in giving such testimony." That is clearly an exception to what is stated in the article now under consideration, section 9 of article I, which is that "No person—

The CHAIRMAN. I catch your thought now.

On the question recurring,

Will the committee agree to the motion?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE I, SECTION 10.

The committee of the whole proceeded to the consideration of section 10 of article I and amendment.

The secretary read the section and amendment submitted in writing by Hon. R. H. Koch, judge of the common pleas court, Pottsville, Pa., as follows:

Section 10. Criminal Information.—Twice in Jeopardy.—Eminent Domain.

1 No person shall, for any indictable offense, be proceeded against criminally by
2 information, except in cases arising in the land or naval forces, or in the militia,
3 when in actual service in time of war or public danger, or by leave of the court
4 for oppression or misdemeanor in office. No person shall, for the same offense,
5 be twice put in jeopardy of life or limb; nor shall private property be taken or
6 applied to public use, without authority of law and without just compensation
7 being first made or secured.

Strike out the whole of the first sentence.

This amendment was not called up.

ARTICLE I, SECTION 11.

The committee of the whole proceeded to the consideration of section 11 of article I and amendment.

The secretary read the section and amendment submitted in writing by H. K. Siebeneck, Esq., Pittsburgh, Pa., as follows:

Section 11. Courts to be Open.—Suits Against Commonwealth.

1 All courts shall be open; and every man for an injury done him in his lands,
2 goods, person or reputation shall have remedy by due course of law, and right and
3 justice administered without sale, denial or delay. Suits may be brought against
4 the commonwealth in such manner, in such courts and in such cases as the
5 legislature may by law direct.

Amend by adding at the end thereof the following: *and the general assembly shall by law define the mode or redress for injuries suffered through the negligence of the commonwealth.*

This amendment was not called up.

ARTICLE I, SECTION 13.

The committee of the whole proceeded to the consideration of section 13 of article I and suggested amendment.

The secretary read the section and amendment submitted in writing by Albert H. Votaw, representing the Pennsylvania Prison Society, Philadelphia, Pa., at public hearings, April 12, 1920, as follows:

Section 13. Bail.—Fines.—Punishments.

1 Excessive bail shall not be required, nor excessive fines imposed, nor cruel
2 punishments inflicted.

Amend to read as follows:

Excessive bail shall not be required, nor excessive fines *or periods of imprisonment* imposed, nor cruel punishments, *including any form of corporal punishment*, inflicted, *nor shall conditions of imprisonment be detrimental to the physical, mental or moral welfare of prisoners.*

Mr. PEPPER. Mr. Chairman: It seems to me that this proposition is a highly important one. I think it is to be regretted that the Commission did not give attention to that section of the Bill of Rights when we were originally making our examination. I am prepared to offer this amendment, sir, although I should like silghtly to change the form of its statement. It seems to me that we ought to have in the Bill of Rights a declaration that deprivation of liberty as a penalty for crime should be always under such conditions as tend to promote the physical, mental and moral welfare of the prisoner, and that there ought to be an affirmative statement of that proposition and not a negative statement in the way of restricting the treatment of prisoners in the form of the words proposed by this amendment. If it is in order, sir, to offer a resolution which is not in the form here submitted, but which covers the thought in a slightly different form, I should like to make such proposition now.

The CHAIRMAN. Any amendment to the suggested amendment, of course, is in order.

Mr. FOX. Mr. Chairman: May I interrupt a moment to ask Mr. Pepper whether he has seen the suggestion made by Judge Gordon on that subject?

Mr. PEPPER. Mr. Chairman: No, I have not.

Mr. FOX. Mr. Chairman: I think we will come to that later.

Mr. PEPPER. Mr. Chairman: Very good.. May I have leave to renew this suggestion after we have reached the point referred to by Judge Fox; or may I, to keep the records clear, move to pass section 13 for the present?

The CHAIRMAN. There are six hundred of these amendments to be considered.

Mr. CARSON. Mr. Chairman: We will never get through.

Mr. PEPPER. Mr. Chairman: I am ready with my amendment, but Judge Fox pertinently raised the question that there is somewhere in the calendar a similar amendment proposed by Judge Gordon.

Mr. CARSON. Mr. Chairman: You will find it on page 54.

Mr. CONNELLY. Mr. Chairman: I understand the amendment of Judge Gordon was to be presented today and had relation to the right of selling prison-made goods.

The CHAIRMAN. I think Mr. Pepper had better offer his amendment now, to keep the record straight.

Mr. CARSON. Mr. Chairman: Judge Gordon's amendment relates simply to the right of a prisoner to support himself by the manufacture of prison-made goods.

Mr. PEPPER. Mr. Chairman: I offer the following as a substitute for section 13 and move its adoption: "Excessive bail shall not be required or excessive fines imposed, nor shall corporal punishments

or cruel punishments be inflicted; and the conditions of imprisonment shall always be such as to promote the physical, mental and moral welfare of the prisoner."

Mr. KELLY. Mr. Chairman: I second the substitute.

On the quesetion,

Will the committee agree to the substitute?

The CHAIRMAN. May I ask for information if you have given consideration as to whether the prisoner was in jail?

Mr. PEPPER. Mr. Chairman: Yes, sir; I have.

The CHAIRMAN. Have you given consideration as to whether or not under that amendment capital punishment could be inflicted.

Mr. PEPPER. Mr. Chairman: Yes, sir.

The CHAIRMAN. Is it the intent that capital punishment shall or shall not be inflicted under the amendment proposed?

Mr. PEPPER. Mr. Chairman: My intention would be to make capital punishment stand as at present, unaffected by this amendment. In other words, I do not think the term "corporal punishment" as known in the law has anything to do with the deprivation of life as a penalty for crime.

The secretary read the amendment as follows:

Excessive bail shall not be required or excessive fines imposed, nor shall corporal punishments or cruel punishment be inflicted; and the conditions of imprisonment shall always be such as to promote the physical, mental and moral welfare of the prisoner.

Mr. FISHER. Mr. Chairman: Unless I have some more explicit understanding of what the term "corporal punishment" includes, I would not want to support this amendment, although it is humane in its purpose. Corporal punishment might be construed in a very broad way by the court. A prison is a place where men are punished for their wrong deeds. The safeguard against that is for people not to commit crime, then they will not endanger themselves with corporal punishment. Corporal punishment may include anything that inflicts suffering on the body. I do not know how far it might go, but I certainly should not want to put it in the constitution. I would be willing however, to join with Mr. Pepper in the latter part of the amendment, that is the substantive statement in his amendment. I would move to amend his amendment by striking out the reference to corporal punishment.

Mr. PEPPER. Mr. Chairman: I will accept Senator Fisher's amendment.

Mr. CARSON. Mr. Chairman: It takes out simply the words "corporal punishment."

Mr. PEPPER. Mr. Chairman: My amendment, changing the form by the omission of the words "corporal punishments or" would accomplish Senator Fisher's purpose. It was that amendment that I accepted.

On the question recurring,

Will the committee agree to the motion?

It was agreed to.

On the question,

Will the committee agree to the section as amended.

It was agreed to.

ARTICLE I, SECTION 20.

The committee of the whole proceeded to the consideration of section 20 of article I and suggested amendment.

The secretary read the section and amendment submitted in writing by H. K. Siebeneck, Esq., Pittsburgh, Pa, as follows:

Section 20. Right of Petition.

1 The citizens have a right in a peaceable manner to assemble together for their
2 common good, and to apply to those invested with the powers of government for
3 redress of grievances or other proper purpose, by petition, address or remon-
4 strance.

Amend by adding at the end thereof the following: *but this right shall not be exercised so as to interfere with the rights of persons using the public thoroughfares.*

This amendment was not called up.

ARTICLE I, SECTION 26-A (NEW)

The committee of the whole proceeded to the consideration of the suggested new section 26-A of article I.

The secretary read the proposed new section suggested by Hon. John S. Rilling, and presented by the chair at public hearings April 7, 1920, as follows:

SECTION 26-A (NEW).

The natural resources of our state, the common inheritance of our people, should, with a due regard for the present and future, be conserved and consumed as a public use, subject to such reasonable regulations and restrictions as the general assembly may impose upon any proprietary rights thereto.

The CHAIRMAN. I am authorized by Mr. Rilling to say that this amendment may be withdrawn.

ARTICLE I, SECTION 26-B (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 26-B of article I.

The secretary read the proposed new section submitted in writing by H. K. Siebeneck, Esq., of Pittsburgh, Pa.; and also by the Civic Club of Allegheny County, Pittsburgh, Pa., as follows:

SECTION 26-B (NEW).

The civil rights hereinbefore enumerated shall appertain to every inhabitant of this commonwealth, excepting the right and privilege of voting and holding office.

This amendment was not called up.

ARTICLE I, SECTION 26-C (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 26-C of article I.

The secretary read the proposed new section submitted in writing by H. K. Siebeneck, Esq., of Pittsburgh, Pa., as follows:

Section 26-C (New).

For every breach of any right guaranteed in this article the wrongdoer, whether a public officer, judge or private person, shall be liable in an action for punitive damages, in which action the jury shall have the right to determine the law and the facts under the direction of the court as in other cases.

Section 1. Legislative Power.

This amendment was not called up.

ARTICLE II, SECTION 1.

The committee of the whole proceeded to the consideration of section 1 of article II and suggested amendment.

The secretary read the section and amendment submitted by Mr. John A. Voll, Commissioner, as follows:

1 The legislative power of this commonwealth shall be vested in a general as-
2 sembly which shall consist of a senate and a house of representatives.

Amend by adding at the end thereof the following:

But the people reserve to themselves the power to propose measures and submit same to the electors of the commonwealth, and also the right to require that any laws which the general assembly may have enacted shall be submitted to a vote of the electors before going into effect, except such laws as may be declared by a two-thirds vote of the members elected to each house to be immediately necessary for the preservation of the public peace, health or safety, or for the support of the state government or its existing public institutions. The general assembly shall make suitable provision for carrying the initiative and referendum into effect, but not more than six per centum of the qualified electors of the commonwealth shall be required to invoke either the initiative or the referendum. The veto power of the executive shall not be exercised as to measures referred to a vote of the people.

Mr. VOLL. Mr. Chairman: I move the adoption of the amendment.

Mr. PINCHOT. Mr. Chairman: I second the motion.

On the question.

Will the Committee agree to the motion?

Mr. VOLL. Mr. Chairman: I have a few words to say regarding the initiative and referendum. It seems to me in this progressive time that it is necessary for the people of all the commonwealth to broaden their franchise and the right of self-government. Twenty-two states have already adopted the initiative and referendum in some form or other. There is not a state that has adopted the initiative and referendum that up to the present time in any manner restricted or abolished it. In fact the tendency is to broaden it. There has been some abuse naturally of the initiative and referendum, and we find that in all new experiments that the people try in governing themselves. We remember distinctly when the Australian ballot was first introduced into our country the arguments that were used against it, and it was criticised severely and condemned by the very people who were benefited most by it, that is, the wage-earners. However, it seems if we should attempt to do away with the Australian or secret ballot it might possibly cause revolution. But the initiative and referendum has proved its soundness in government. It is not a form of government, as I see it, it is a contrivance of government, and it is a supplement to the representative form of government. Personally I favor the indirect initiative rather than the direct initiative. In that way it is a supplement to the representative form of government in that it gives the legislature always the right to take up the initiative bill that has been brought to its attention through the signatures of the petitions by the people. It allows the legislature to either accept that initiative bill or reject it, and in that case the people then can exercise their rights again by the referendum by going out and getting petitions signed again to have the bill referred to them. It seems to me it is a safeguard in government, it is a check on the legislature and a check on the legislators; it is something that the people should have within their own hands and the power to use if it is necessary to use it. If you go through this brief that has been submitted here by the secretary upon request of Mr. Pinchot, we can find that in some cases the people have voted against

themselves, but in a majority of cases the people have used very good judgment in the laws that they have passed or those that they have rejected; but like everything else it takes some time. However, as previously stated, there are twenty-two states that have adopted it, and none of them have abolished it up to the present time, and all are broadening its scope, and it seems to me that Pennsylvania at this time should take some action, particularly so because of the sentiment that we see prevailing among the citizens as a whole in our country at this time. It is unnecessary to go into that just now, but there is a demand for greater participation in government, and it might be well to give some thought to this extention to the people before some change is made in our present form of government through the ballot and not through revolution by violence.

Mr. PINCHOT. Mr. Chairman: I merely wish to rise and say that I believe that what Mr. Voll has said is wise, that I should favor this or some other, perhaps, a shorter form, to make it possible in the future if the times comes to take this effective measure, which I believe with Mr. Voll is, under all the circumstances, a very valuable one. I shall not take the time of the commission to advocate it further.

Mr. REED. Mr. Chairman: I understood Mr. Voll to say that he preferred the indirect form of initiative, which I suppose is similar to the one that has been adopted in Illinois, where the vote is merely advisory to the legislature.

Mr. VOLL. Mr. Chairman: No; the indirect form, as I understand it and read it, is that the people have the right to initiate a law through petition; but then it is not voted on directly by the people until it has passed through the hands of the legislature. That is indirect.

Mr. REED. Mr. Chairman: Suppose the legislature votes it down?

Mr. VOLL. Mr. Chairman: Then the people have the right to petition for a referendum.

Mr. REED. Mr. Chairman: Direct?

Mr. VOLL. Mr. Chairman: Yes, direct in that case. Direct initiative means that a law is initiative by the people, it goes to the people for a vote without going through the hands of the legislature.

Mr. REED. Mr. Chairman: That practically abolishes the legislature.

Mr. PEPPER. Mr. Chairman: I shall vote against this proposition for two reasons. In the first place, because I have come to believe that the operation of the principle of the referendum, different from that which was originally supposed, is in fact a check upon progressive legislation rather than an effective means of promoting it. And in the second place, because I think that the referendum and initiative are inconsistent with the principle of representative government to which we are committed; and I for one believe that the demand for this form of substitution of direct government for representative government would never have gained the momentum which it has acquired if our system of representative choice had been more perfect than it has been. I became converted to the system of proportional representation, and it seems to me that the answer to the very serious question raised by Mr. Voll is not the adoption of something inconsistent with representative government, but the adoption of a more perfect system of representation than that under which we

live. I refer to the system of proportional representation in the choice of the legislative assembly. So for these two reasons I propose to vote against the proposition of Mr. Voll.

On the question recurring,

Will the committee agree to the motion?

It was not agreed to.

ARTICLE II, SECTION 2.

The committee of the whole proceeded to the consideration of section 2 of article II and suggested amendment.

The secretary read the section and amendment submitted by Hon. Francis Shunk Brown, of Philadelphia, at public hearings April 20, 1920, as follows:

Section 2. Election of Members.—Vacancies.

1 Members of the general assembly shall be chosen at the general election every
2 second year. Their term of service shall begin on the first day of December next
3 after their election. Whenever a vacancy shall occur in either house, the presid-
4 ing officer thereof shall issue a writ of election to fill such vacancy for the re-
5 mainder of the term.

Amend by striking out on line 1 the word [general assembly] and inserting in lieu thereof the words *house of representatives.*

The CHAIRMAN. It occurs to the chair that Mr. Brown has mistaken the meaning of that section. We do elect members to the general assembly every second year, and the senate and house constitute the general assembly. The only thing is that the general assembly when elected is only in session every second year. We will throw the whole machinery out of gear if we change that, and there will be no provision for the election of senators. The idea may be all right, but that is the chair's thought.

This amendment was not called up.

ARTICLE II, SECTION 11.

The committee of the whole proceeded to the consideration of section 11 of article II and suggested amendment.

The secretary read the section and amendment submitted in writing by H. K. Siebeneck, Esq., of Pittsburgh, Pa., as follows.

Section 11. Powers of Each Branch.—Expulsion.

1 Each house shall have power to determine the rules of its proceedings and punish
2 its members or other persons for contempt or disorderly behavior in its presence, to
3 enforce obedience to its process, to protect its members against violence or offers
4 of bribes or private solicitation, and, with the concurrence of two-thirds, to expel
5 a member, but not a second time for the same cause, and shall have all other
6 powers necessary for the legislature of a free state. A member expelled for cor-
7 ruption shall not thereafter be eligible to either house, and punishment for con-
8 tempt or disorderly behavior shall not bar an indictment for the same offense.

Amend by adding at the end thereof the following: *Any candidate for legislative office found guilty of corrupt or illegal election practices may be by law prevented from acting in such legislative capacity, in the same manner that other candidates may by law be disqualified from holding office.*

The amendment was not called up.

ARTICLE II, SECTION 15.

The committee of the whole proceeded to the consideration of section 15 of article II, with the suggested amendment.

The secretary read the section and amendment submitted in writing by H. K. Siebeneck, Esq., of Pittsburgh, Pa., as follows:

Section 15. Privileges of Members.

1 The members of the general assembly shall in all cases, except treason, felony,
2 violation of their oath of office, and breach or surety of the peace, be privileged
3 from arrest during their attendance at the sessions of their respective houses, and
4 in going to and returning from the same; and for any speech or debate in either
5 house they shall not be questioned in any other place.

Amend by inserting on line 2 after the word "office" the words *or election laws.*

The amendment was not called up.

ARTICLE II, SECTION 16.

The committee of the whole proceeded to the consideration of section 16 of article II and suggested amendment.

The secretary read the section and amendment suggested in writing by Hon. Alex. Simpson, Jr., justice of the supreme court, Philadelphia, Pa., as follows:

Section 16. Senatorial Districts.—Ratio.

1 The state shall be divided into fifty senatorial districts of compact and con-
2 tiguous territory as nearly equal in population as may be, and each district shall
3 be entitled to elect one senator. Each county containing one or more ratios of
4 of population shall be entitled to one senator for each ratio, and to an additional
5 senator for a surplus of population exceeding three-fifths of a ratio, but no county
6 shall form a separate district unless it shall contain four-fifths of a ratio, except
7 where the adjoining counties are each entitled to one or more senators when such
8 county may be assigned a senator on less than four-fifths and exceeding one-half
9 of a ratio; and no county shall be divided unless entitled to two or more senators.
10 No city or county shall be entitled to separate representation exceeding one-sixth
11 of the whole number of senators. No ward, borough or township shall be divided
12 in the formation of a district. The senatorial ratio shall be ascertained by divid-
13 ing the whole population of the state by the number fifty.

Amend by inserting on line 1 after the words "districts of" the words *as nearly;* and by inserting on line 2 after the word "territory" the words *as may be and.*

This amendment was not called up.

ARTICLE II, SECTION 17.

The committee of the whole proceeded to the consideration of section 17 of article II and suggested amendments.

The secretary read the section and amendment submitted by the American Proportional Representation League, C. G. Hoag, Secretary, Philadelphia, Pa., as follows:

Section 17. Representative Districts.

1 The members of the house of representatives shall be apportioned among the
2 several counties, on a ratio obtained by dividing the population of the state as
3 ascertained by the most recent United States census by two hundred. Every
4 county containing less than five ratios shall have one representative for every full
5 ratio, and an additional representative when the surplus exceeds half a ratio, but
6 each county shall have at least one representative. Every county containing five
7 ratios or more shall have one representative for every full ratio. Every city
8 containing a population equal to a ratio shall elect separately its proportion of
9 the representatives allotted to the county in which it is located. Every city en-
10 titled to more than four representatives, and every county having over one hun-
11 dred thousand inhabitants shall be divided into districts of compact and con-
12 tiguous territory, each district to elect its proportion of representatives accord-
13 ing to its population, but no district shall elect more than four representatives.

Substitute for this section the following:

The state shall be divided into not more than thirty representative districts of compact and contiguous territory. No district shall be created containing less than three two-hundredths of the population of the state as ascertained by the most recent United States census. The members of the house of representatives shall be apportioned among the several representative districts on a ratio obtained by dividing the population of the state as ascertained by the most recent United States census by two hundred. Each representative district shall be entitled to one representative for each full ratio of its population and to an additional representative for a surplus of population exceeding half a ratio.

Mr. VOLL. Mr. Chairman: I move the adoption of this amendment.

Mr. PEPPER. Mr. Chairman: I second the motion.

The motion was not agreed to.

The secretary read the amendments submitted in writing by the chairman as follows:

Amend by striking out on line 3 the word [two] and inserting in lieu thereof the word *one* before the word "hundred."

Amend by striking out on lines 3, 4, 5, and 6 the second sentence.

Amend by striking out on line 10 the word [one] and inserting in lieu thereof the word *two* before the word "hundred."

Amend by striking out all after the word "population" on line 13.

The CHAIRMAN. As this constitution is to be passed on by the legislature, and as the legislature would not be very likely to pass on a constitution which would put one-half of it out of office, the amendment will be withdrawn.

ARTICLE II, SECTION 18.

The committee of the whole proceeded to the consideration of section 18 of article II and suggested amendment.

The secretary read the section and amendment submitted in writing by H. K. Siebeneck, Esq., of Pittsburgh, Pa., and also by the Civic Club of Allegheny County, Pittsburgh, Pa., as follows.

Section 18. Legislative Apportionment.

1 The general assmbely at its first session after the adoption of this Constitution,
2 and immediately after each United States decennial census, shall apportion the
3 state into senatorial and representative districts agreeably to the provisions of the
4 two next preceding sections.

Amend by adding to the end thereof the following: *and the failure of the general assembly so to apportion at such session shall deprive each member of his salary or other emoluments for such session.*

This amendment was not called up.

The secretary read the amendment submitted in writing by Hon. Alexander Simpson, Jr., justice of the supreme court, Philadelphia, Pa., as follows:

Amend by adding at the end thereof the following: *If the general assembly shall adjourn finally without making the apportionment in this section and from time to time required, it shall be the duty of the Governor to appoint a commission of seven members, who shall have the same qualifications as in this Constitution provided for members of the Senate and who shall hold no other office of honor, trust or profit under this state or any municipality thereof. Not more than three members of the commission shall be members of any one political party. It shall be the duty of the commission to apportion the state into senatorial and representative districts agreeably to the provisions of the two next preceding sections, and when the apportionment thus made shall have been completed it shall have the same force as an apportionment made by the general assembly.*

Mr. KELLY. Mr. Chairman: I move the adoption of this amendment.

Mr. CARSON. Mr. Chairman: I will second the motion so that it may be discussed, sir.

On the question.

Will the Committee agree to the motion?

Mr. KELLY. Mr. Chairman: The idea would seem to be, the legislature very often fails to pass an apportionment bill, session after session, and it seems to me that if the apportionment was made by such a commission as is provided by this amendment it would be altogether likely that there would be at least a fair apportionment of the state and would prevent the legislature by non-action defeating the intention of the constitution.

On the question recurring,

Will the committee agree to the motion?

It was not agreed to.

ARTICLE III, SECTION 3.

The committee of the whole proceeded to the consideration of section 3 of article III and suggested amendment.

The secretary read the section and amendment submitted in writing by the Legislative Reference Bureau, Harrisburg, Pa., as follows:

Section 3. Subject of Bills.—Title.

1 No bill except general appropriation bills *and codifications, compilations and*
2 *general revisions of existing statutory laws* shall be passed containing more than
3 one subject which shall be clearly expressed in its title. *Any law may in the body*
4 *thereof set forth a short title by which it may be cited. A law amending, reviving*
5 *or extending a law shall set forth in its title the title or the short title of the law affected.*

Strike out the word [extending] on line 5.

The CHAIRMAN. The chair may state that there are very few acts that are extended by reference alone.

Mr. PEPPER. Mr. Chairman: I move that the amendment be adopted.

Mr. PINCHOT. Mr. Chairman: I second the motion.

On the question.

Will the Committee agree to the motion?

Mr. PEPPER. Mr. Chairman: If I may suggest, the statement of the proposed amendment is not quite complete, the word "or" should precede the word "reviving," so that it would read "A law amending or reviving a law."

Mr. FISHER. Mr. Chairman: It seems to me the word "extending" was originally incorporated because of the special legislation that was in vogue. It was formerly the custom to extend local laws passed for one county to other counties, or for one subject to another subject, but of course the practice has become more or less obsolete. Yet, we still recognize the principle of special legislation. It seems to me it would be well to leave this unchanged. It may be useful at some time in the future to have legislation extended.

The CHAIRMAN. Is it not bad legislation to extend an act?

Mr. FISHER. Mr. Chairman: I admit it is, but we still have special legislation on the books.

On the question recurring,

Will the committee agree to the motion?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XIII, SECTION 1.

The committee of the whole proceeded to the consideration of section 1 of article XIII and suggested amendment.

The secretary read the amendmend submitted in writing by the Johnstown Chamber of Commerce, Johnstown, Pa., as follows:

Substitute for this section the following:

No new county shall be established which shall reduce any county to less than fifty thousand inhabitants, nor shall any county be formed containing a less population.

The CHAIRMAN. This amendment is out of place, but it might as well be voted on. It is an amendment to article XIII.

Is this suggested amendment called up?

Mr. THORPE. Mr. Chairman: I move the adoption of this amendment.

Mr. FOX. Mr. Chairman: I second the motion.

The motion was not agreed to.

ARTICLE III, SECTION 4.

The committee of the whole proceeded to the consideration of section 4 of article III and suggested amendments.

The secretary read the section and amendment submitted in writing by the Civic Club of Allegheny County, Pittsburgh, Pa., as follows:

Section 4. Three Readings.—Amendments.—Final Vote.

1 Every bill shall be read at length on three different days in each house; all
2 amendments made thereto shall be printed for the use of the members before the
3 final vote is taken on the bill, and no bill shall become a law unless on its final
4 passage the vote be taken by yeas and nays, the names of the persons voting for
5 and against the same be entered on the journal, and a majority of the members
6 elected to each house be recorded thereon as voting in its favor.

Add at the end thereof the following:

The general assembly may, by appropriate legislation, provide for the use of mechanical devices for such voting in lieu of the viva voce vote.

Mr. CARSON. Mr. Chairman: I was going to ask for information from Senator Fisher, if he will give it to us, whether there is any practical convenience in the matter of voting which is subserved by this mechanical device.

Mr. FISHER. Mr. Chairman: I would answer that I assume it is intended to overcome the delays of roll-calls. Of course, in a small body like the senate, very little would be gained by it. There might be a little time gained by the roll-calls in the house. However, it would seem to me it would open the way to questionable practice to introduce mechanical devices.

Mr. PEPPER. Mr. Chairman: May I ask Senator Fisher, through you, whether there is anything in the section as it stands which prescribes a viva voce vote? The amendment seems to presuppose that. I do not find anything in the body of the section which would limit the assembly to a viva voce vote if they chose to adopt some other form.

Mr. FISHER. Mr. Chairman: A roll call is always by the yeas and nays, which by implication requires a viva voce vote.

The CHAIRMAN. The chair hears no motion, and the amendment will be dropped.

The secretary read the amendment submitted in writing by the Legislative Reference Bureau, Harrisburg, Pa., as follows:

Strike on the words [read at length] on line 1 and insert the word *considered.*

This amendment was not called up.

ARTICLE III, SECTION 6.

The committee of the whole proceeded to the consideration of section 6 of article III and suggested amendments.

The secretary read the section and amendment submitted in writing by Richard E. Cochran, Esq., of York, Pa., as follows:

Section 6. Revival and Amendment of Laws.

1 *A law amending, reviving or extending the provisions of a law shall set forth*
2 *in full the part of the law affected, and an amending law shall also set forth in*
3 *full the part of the law affected as amended.*

Retain section as in present Constitution, reading as follows:

No law shall be revived, amended, or the provisions thereof extended or conferred, by reference to its title only, but so much thereof as is revived, amended, extended or conferred shall be re-enacted and published at length.

This amendment was not called up.

The secretary read the section and amendment submitted in writing by the Legislative Reference Bureau, Harrisburg, Pa., as follows:

Amend by striking out the word [affected] on line 2 and inserting in lieu thereof the words, *amended, revived or extended;* and by striking out in lines 3 and 4 the words [affected as amended] and inserting in lieu thereof the words *as amended.*

Mr. PEPPER. Mr. Chairman: It is really a matter of style, is it not?

The CHAIRMAN. Mr. Pepper's suggestion is that this properly goes to the committee on style, and it so seems to the Chair. If there is no objection, this amendment will be dropped and the attention of the committee on style will be directed to it.

The chair hears no objection.

ARTICLE III, SECTION 6-A (NEW).

The committee of the whole proceeded to the consideration of the proposed new section of article III.

The secretary read the proposed new section submitted in writing by the Civic Club of Allegheny County, Pittsburgh, Pa., as follows:

Section 6-A (New). When New Laws Shall Become Effective.

Unless otherwise specifically provided in the particular act, each law shall go into effect on the first day of January next succeeding the date of its enactment.

Mr. FISHER. Mr. Chairman: I move the adoption of the section.

Mr. REED. Mr Chairman: I second the motion

On the question.

Will the Committee agree to the motion?

Mr. REED. Mr. Chairman: I would like to ask Senator Fisher whether the first of January is not too long, and whether the first of July would not be better? As it is now, a lot of laws are passed here which you cannot get unless you put somebody at it to watch, and you cannot get the pamphlet laws until they come out two months afterwards.

The CHAIRMAN. You can get them for two dollars.

Mr. REED. Mr. Chairman: You have to have them before you know what is in them. Lawyers do not always have the two dollars.

The CHAIRMAN. That does not apply to the members of the Pittsburgh bar.

Mr. REED. Mr. Chairman: We are law-breakers there for months and do not know it. I think January is too far off.

Mr. FISHER. Mr. Chairman: My observation has been that the session of the legislature usually last until some time in June, very ofter running close to the first of July. Then it requires several months after that for the printing of the laws and particularly getting out the bound volumes. It seems to me that January first following, unless otherwise provided, is a convenient date.

On the question recurring,

Will the committee agree to the motion?

It was agreed to.

ARTICLE III, SECTION 7

The committee of the whole proceeded to the consideration of section 7 of article III and suggested amendments.

The secretary read clause 1 of the section and amendment suggested by T. M. Hyndman, representing the Retail Merchants Association of Pennsylvania, Philadelphia, Pa., at public hearings April 13, 1920.

Section 7. Special and Local Legislation Limited.

The general assembly shall not pass any local or special law:

1. Authorizing the creation, extension or impairing of liens.

Amend by adding at the end thereof the words: *A law applicable only to the collection of debts for necessaries shall not be regarded as special legislation within the prohibition of this clause.*

This amendment was not called up.

The secretary read clause 2 of the section and the amendment submitted by the secretary as follows:

2. Regulating the affairs of counties, cities, townships, wards, boroughs or school districts.

Amend by striking out clauses 2, 7, 10, 11, 14 and 15 and inserting in lieu thereof as clause 2 the following:

Creating and incorporating or regulating municipalities; changing their charters or boundaries; creating municipal officers or prescribing their powers and duties; or vacating or changing municipal plats, roads,, streets or alleys.

The CHAIRMAN, The secretary suggests that this amendment suggested by him should properly go to the committee on style when appointed.

This amendment was not called up.

The secretary read clauses 3, 4, 5, 6 and 7 of the amendment submitted by the secretary as follows:

3. Changing the names of persons or places.
4. Changing the venue in civil or criminal cases.
5. Authorizing the laying out, opening, altering or maintaining, roads, highways, streets or alleys.
6. Relating to ferries or bridges, or incorporating ferry or bridge companies, except for the erection of bridges crossing streams which form boundaries between this and other state.
7. Vacating roads, town plats, streets or alleys.

Strike out.

The CHAIRMAN. The suggestion of the secretary covers also the suggested amendment to these clauses, and it is referred to the committee on style.

The secretary read clauses 8, 9 and 10 of the section and the amendment submitted by the secretary and suggested by Lawrence H. Rupp, Esq., of Allentown, Pa., at public hearing April 13, 1920, as follows:

8. Relating to cemeteries, graveyards, or public grounds not of the state.
9. Authorizing the adoption or legitimation of children.
10. Locating or changing county seats, erecting new counties or changing county lines.

Strike out.

The CHAIRMAN. The secretary's suggestion also covers this suggested amendment and it will be referred to the committee on style.

The secretary read the amendment to clause 10 submitted in writing by H. K. Siebeneck, Esq., of Pittsburgh, Pa., and also by the Civic Club of Allegheny County, Pittsburgh, Pa., as follows:

Amend by striking out the words [erecting new counties or changing county lines].

This amendment was not called up.

Mr. REED. Mr. Chairman: I do not understand the references to the committee on style. Those several provisions at the head of page 13 are pretty important. Are they to be referred to the committee on style to strike them out, or do as they please with them?

The CHAIRMAN. If the committee on style does not want to act on them, the committee will not act. The secretary does not press them before the commission. I said they are properly before the committee on style rather than the commission.

Mr. REED. Mr. Chairman: They are matters of substance.

Mr. CARSON. Mr. Chairman: I am embarrassed by the same doubt that beclouds Judge Reed. I do not know what is meant by "strike out." Does it mean strike out the provisions relating to cemeteries, graveyards or public grounds, and refer that to the committee on style, or does it mean that the italicized paragraph at the foot of page 12 submitted by the secretary is a verbal statement?

The CHAIRMAN. The secretary informs me that all at the head of page 13 is a printer's error.

Mr. REED. Mr. Chairman: I would like to get that printer in here some time.

Mr. THORPE. Mr. Chairman: May I make an inquiry? As the matter of the subdivision of counties may possibly come up in detail a little later, if this is passed over does it mean it is to stand as in the original constitution, or does it mean that the committee on style is to do as it pleases as to the arrangement?

The CHAIRMAN. It would mean the committee on style would exercise such judgment as it saw fit to exercise within the limits of the resolution creating the committee on style.

The Secretary read clause 11 of the section and the amendment submitted by the secretary as follows:

11. Incorporating cities, towns or villages, or changing their charters.
Strike out.

The CHAIRMAN. This amendment may be considered by the committee on style if it desires.

The secretary read the amendment to clause 11 suggested by Hon. Alexander Simpson, Jr., Justice of the Supreme Court, Philadelphia, Pa., as follows:

Amend by striking out the words [cities, towns or villages] and inserting in lieu thereof the word *municipalities*.

Mr. ENGLISH. Mr. Chairman: I move the adoption of the suggested amendment.

Mr. PEPPER. Mr. Chairman: I second the motion:

The motion was agreed to.

The secretary read clause 12 of the section and the amendment submitted by the Secretary as follows:

12. For the opening and conducting of elections; [or] fixing or changing the of voting.
Amend by striking out the word [or] on the first line of the clause and inserting at the end thereof the words *creating election officers or prescribing their powers and duties*, so that the clause will read:
12. For the opening and conducting of elections; [or] fixing or changing the place of voting; *creating election officers, or prescribing their powers and duties.*

The CHAIRMAN. The secretary informs me this amendment can also be considered by the committee on style if the committee on style deems it wise.

It was not called up.

On the question.

Will the committee agree to the section as amended?

It was agreed to.

RECESS

Mrs. MILLER. Mr. Chairman: I move that we take a recess until 1:30 o'clock this afternoon.

Mrs. WARBURTON. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 1.05 o'clock P. M., the committee of the whole took a recess until 1.30 o'clock P. M.

AFTER RECESS

The committee of the whole reconvened at 1.30 o'clock P. M.

The Chairman, William I. Schaffer, in the Chair.

The CHAIRMAN. The hour fixed for the reconvening of the committee of the whole having arrived, the committee will be in order.

ARTICLE III, SECTION 7-A.

The committee of the whole proceeded to the consideration of section 7-A of article III and suggested amendments.

The secretary read the section and amendment submitted in writing by H. K. Siebeneck, Esq., of Pittsburgh, Pa., as follows:

Section 7-A. Classification, Etc.

1 For the purpose of legislation the general assembly shall have power to classify
2 counties, cities, boroughs, school districts and townships according to population;
3 but counties, cities or school districts shall not be divided into more than seven
4 classes, and boroughs and townships into more than five classes.

Amend by inserting on line 1 after the word "classify" the words *all subjects including.*

This amendment was not called up.

The secretary read the amendment submitted in writing by the Legislative Reference Bureau, Harrisburg, Pa., as follows:

Amend by inserting on line 1 after the word "legislation" the words *regulating their affairs.*

The CHAIRMAN. The chair moves the adoption of this amendment.

Mr. REED. Mr. Chairman: I will second the motion.

On the question.

Will the Committee agree to the motion?

Mr. CARSON. Mr. Chairman: I wish to ask whether that is the proper place for the introduction of those words. The amendment reads "For the purpose of legislation regulating their affairs the general assembly shall have power to classify." I think that the words "regulating their affairs," ought not to be inserted after the word "legislation," but ought to be later in the sentence.

The CHAIRMAN. The chair's thought about it is that there ought to be no special legislation for the counties, cities, boroughs, and so on, except special legislation regulating their affairs. That is, that the particular legislation as to municipalities ought to be legislation regulating their affairs, but could not specially regulate with reference to municipalities except with reference to those things that regulate their affairs. For instance, it could not provide a different method to regulate procedure.

Mr. CARSON. Mr. Chairman: Why should the word "legislation" be there at all? The general assembly whenever it acts, of course, legislates. If it said "For the purpose of regulating the affairs of counties, cities, boroughs, school districts," and so forth, "the general assembly shall have power to classify them according to population," then I could understand it.

The CHAIRMAN. I accept that.

Mr. CARSON. Mr. Chairman: It may be a pure matter of style, but at the same time it seems to me it is essential to the meaning. I would strike out the words "For the purpose of legislation."

The CHAIRMAN. It seems to me, Mr. Carson, that the word "legislation" does belong in, "For the purpose of legislation regulating their affairs the general assembly shall have power," and so forth.

Mr. CARSON. Mr. Chairman: If we strike out the word "legislation" and say "For the purpose of regulating their affairs, counties, cities, boroughs, school districts and townships, according to population, the general assembly shall have power to classify them."

The CHAIRMAN. Then I think you would open a very wide door if you did that.

Mr. CARSON. Mr. Chairman: I was only asking for information.

The CHAIRMAN. I am afraid you would open a very wide door under the guise of classification; you could do a great many other things that are not intended to be done.

Mr. THORPE. Mr. Chairman: Just a word; you mean classify according to population. Is that it? Then why not say so?

Mr. REED. Mr. Chairman: You do say so in the original draft.

On the question recurring,

Will the committee agree to the motion?

It was agreed to.

The secretary read the amendment submitted in writing by Owen J. Roberts, Esq., of Philadelphia, as follows:

Amend by inserting in the last line between the words "townships" and "into" the words *shall not be divided.*

The CHAIRMAN. Is this suggested amendment called up?

Mr. FOX. Mr. Chairman: I move the adoption of this amendment.

Mr. ENGLISH. Mr. Chairman: I second the motion.

Mr. REED. Mr. Chairman: That I think would be for the committee on style.

On the question,

Will the committee agree to the motion?

It was agreed to.

The secretary read the amendment submitted by Harold W. Dobbs, Secretary, and Clinton Rogers Woodruff, Esq., representing the National Municipal League, Philadelphia, Pa., as follows:

Amend by striking out on line 1 the words [shall have power] and inserting in lieu thereof the word *may;* by striking out on line 2 the words [counties, cities, boroughs, school districts and townships] and inserting in lieu thereof the word *municipalities;* and by adding at the end thereof: *The general assembly may enact laws for the organization and government of any municipality, or any class of municipalities, to become effective in any municipality only when submitted to the electors thereof and approved by a majority of those voting thereon; and such laws shall not be deemed local or special laws.*

The CHAIRMAN. Is this suggested amendment called up

Mr. PEPPER. Mr. Chairman: I move the adoption of the amendment.

Mr. VOLL. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. REED. Mr. Chairman: At the same time why cannot we read these other suggestions and consider one of them? There are four there, and if you pass this you undo what has been done here for the last ten minutes.

The CHAIRMAN. I do not quite grasp what you mean by what we have done within the last ten minutes.

Mr. REED. Mr. Chairman: We strike out a whole lot of things and insert the word "may" and then add this other to it, remolding the provision.

The CHAIRMAN. It is the chair's understanding of this amendment that it would enable municipalities to negative an act of assembly passed by the legislature and make the municipalities supreme over the legislature in that respect. Is that the effect of it?

Mr. PEPPER. Mr. Chairman: Yes; I understand that to be the effect, the exercise of local veto power over legislation affecting the municipality in question so far as the form of organization is concerned.

The CHAIRMAN. A municipality, which is the creature of the state, would become greater than the state because it could negative an act of assembly? I want to be sure I understand it.

Mr. PEPPER. Mr. Chairman: I think the chair understands it.

Mr. REED. Mr. Chairman: You have four provisions on the same subject that ought to be read together.

The CHAIRMAN. If motion is made that this section and the one following—

Mr. REED. Mr. Chairman: All relate to the same subject.

The CHAIRMAN. Down to and including all on page 15?

Mr. REED. Mr. Chairman: Yes.

Mr. VOLL. Mr. Chairman: May I inquire, is it the understanding here that it gives a municipality power to negative legislative acts? I do not understand it that way. Of course, I do not know anything about law, but it is the right of the legislature, as I understand it, to pass a general law giving the municipalities certain rights and laying down a certain form of government for them to go by. However, they are under the jurisdiction of the legislature only so far as that form of government is concerned. If there is anything in the form of government, or anything under the form of government, they can exercise their powers of government under that form; but the legislature delegates their powers of government under that form; but the legislature delegates certain rights to each municipality, and within those rights they can exercise their powers, but outside of those rights it must come under the legislature.

The CHAIRMAN. That is not the way I understand it. "The general assembly may enact laws for the organization and government of any municipality, or any class of municipalities, to become effective in a municipality only when submitted to the electors thereof and approved by a majority of those voting thereon."

Mr. VOLL. Mr. Chairman: That means that if the general assembly creates a form of government for municipalities, there are three forms of government for municipalities, as I understand it, it

is optional with the citizens of the municipalities whether they shall adopt one of those forms or not, and if they want to adopt one of those forms it is submitted to the people, and by a majority vote they decide to adopt one of the forms; then it becomes the governing power for that city or municipality.

Mr. ENGLISH. Mr. Chairman: It does seem to me that this amendment is in the wrong place. The article of the constitution and the section that we are now considering have to do with possible subjects of special legislation, and if we are to have a separate article on municipalities this is certainly not the place to incorporate any kind of a home-rule provision, no matter what our views may be as to the substance of the proposition; and I therefore hope that the gentleman from Philadelphia will not insist that this amendment be concurred in. When the time comes to consider the question of home rule I expect to be prepared to submit for the consideration of the commission a section which I think will be as satisfactory as a home-rule secion can be made to this commission, and at that time I think the matter can be disposed of in its substantial aspect; but this is not the place for it.

Mr. PEPPER. Mr. Chairman: In view of what Mr. English states I am glad to withdraw the motion I have made in the interest of having a more orderly consideration of the subject when we consider the home-rule section.

The CHAIRMAN. That is the chair's thought; we can incorporate it in the special legislation clause of the constitution. The thought when Mr. Schoonmaker discussed this question before us was to insert it in section 1-A on municipalities rather than insert it in this.

Mr. PEPPER. Mr. Chairman: I suppose the justification for including it here is that the power sought to be given to the general assembly extends to a power to enact a form of organization for any municipality and not merely for a class except by these provisions that such a law shall not be deemed local or special; but if it could be equally well taken care of by a proviso when we come to the home-rule section, then I withdraw the motion.

The CHAIRMAN. Mr. Pepper's motion is withdrawn, and there being no motion to adopt the amendment, it will be dropped.

The secretary read the amendment submitted by A. R. Hatton, representing the Peoples Association of Pennsylvania, at public hearings April 13, 1920, as follows:

Amend by striking out the words [counties, cities, boroughs, school districts and townships] on lines 1 and 2 and inserting in lieu thereof the word *municipalities;* by striking out the word [or] on line 4 and inserting in lieu thereof the word *and;* by inserting the word *each* after the word "classes" on line 3 and also on line 4; and by adding at the end thereof the following sentence:

The general assembly may also enact laws for the organization and government of municipalities or any class thereof, to become effective in any municipality only when submitted to the electors thereof and approved by a majority of those voting thereon; and such laws shall not be deemed local or special laws.

So that the section, as amended, shall read:

Section 7-A. For purposes of legislation the general assembly may classify [counties, cities, boroughs, school districts and townships] *municipalities* according to population; but counties, cities [or] *and* school districts shall not be divided into more than seven classes *each*, and boroughs and townships into more than five classes each. *The general assembly may also enact laws for the organization and government of municipalities, or any class thereof, to become effective in any municipality only when submitted to the electors thereof and approved by a majority of those voting thereon; and such laws shall not be deemed local or special laws.*

Mr. VOLL. Mr. Chairman: May I ask if it is the intention of Mr. English to cover these matters in his proposition?

Mr. ENGLISH. Mr. Chairman: It is.

This amendment was not called up.

The secretary read the amendment suggested in writing by F. P. Schoonmaker, Esq., city solicitor, Bradford, Pa., on behalf of the League of Third Class Cities, as follows:

Strike out of this article and insert with amendment as section 1-A in article on municipalities. See *infra* municipalities.

The CHAIRMAN. This amendment will come up, as the chair understands it, under the section on municipalities.

The secretary read the amendment submitted by Samuel B. Scott, Esq., representing the Constitutional Club, Philadelphia, at public hearings April 7, 1920, as follows:

Strike out the present section and substitute the following:

Section 7-A. *No law shall be held to be a local or special law which operates equally upon every member of a class. The general assembly may classify municipalities, but shall not create more than seven classes of cities, counties or school districts, nor more than five classes of any other municipality upon the basis of population. The general assembly may classify municipalities upon the basis of conditions requiring special regulation, including the basis of the coincidence of boundaries of different municipalities, or other relations between them requiring special regulation. No law shall be held to be local or special which, being otherwise of a general nature, does not go into effect as regards any particular municipality until affirmatively adopted by the authorities or people of said municipality as provided by law.*

Mr. CARSON. Mr. Chairman: Is not that substantially the same thing as we have been looking at?

The CHAIRMAN. It seems so to the chair.

This amendment was not called up.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE III, SECTION 8.

The committee of the whole proceeded to the consideration of section 8 of article II and suggested amendment.

The secretary read the section and amendment submitted in writing by the Legislative Reference Bureau, Harrisburg, Pa., as follows:

Section 8. Notice of Local and Special Bills.

1 No local or special bill shall be passed unless notice of the intention to apply
2 therefor shall have been published in the locality where the matter or thing to be
3 affected may be situated, which notice shall be at least thirty days prior to the
4 introduction into the general assembly of such bill and in the manner to be pro-
5 vided by law; the evidence of such notice having been published shall be exhibited
6 in the general assembly before such act shall be passed.

Amend by inserting after the word "bill" on line 1 the words *except a bill only for the repeal of a local or special law.*

Mr. FOX. Mr. Chairman: I move the adoption of the amendment.

Mr. ENGLISH. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question,

Will the committee agree to the section as amended

It was agreed to.

ARTICLE III, SECTION 10.

The committee of the whole proceeded to the consideration of section 10 of article III and suggested amendment.

The secretary read the section and amendment submitted in writing by H. K. Siebeneck, Esq., Pittsburgh, Pa., and also by the Civic Club of Allegheny County, Pittsburgh, Pa., as follows:

Section 10. Officers and Employes.—Payments.

1 The general assembly shall prescribe by law the number, duties and compensa-
2 tion of the officers and employes of each house, and no payment shall be made
3 from the state treasury, or be in any way authorized, to any person, except of
4 an acting officer or employe elected or appointed in pursuance of law.

Amend by adding at the end thereof the following: *who has in person performed the duties of his office or position.*

Mr. THORPE. Mr. Chairman: I move the adoption of the amendment.

The CHAIRMAN. The chair hears no second to the motion, and the suggested amendment will therefore be dropped.

ARTICLE III, SECTION 11-A. (NEW).

The committee of the whole proceeded to the consideration of the suggested new section 11-A of article III.

The secretary read the suggested new section submitted in writing by George R. Wallace, Chairman, Committee on Charter Revision, Chamber of Commerce, Pittsburgh, Pa., as follows:

Section 11-A.

No bill shall be passed which provides a fine or penalty that may be received or shared by any person or corporation, other than the commonwealth or a municipality thereof.

This amendment was not called up.

ARTICLE III, SECTION 12.

The committee of the whole proceeded to the consideration of section 12 of article III and suggested amendment.

The secretary read the section and amendment submitted in writing by H. K. Siebeneck, Esq., of Pittsburgh, Pa., as follows:

Section 12. Public Printing and Supplies.

1 The printing and binding of the laws, journals, bills, documents and papers
2 of the general assembly and printing and binding required for the other de-
3 partments shall be let on contract or done directly by the state in such manner
4 as shall be prescribed by law. All furnishings and fuel for the capitol buildings
5 and all paper and stationery required for the legislative and other departments
6 shall be procured under contract. All contracts comprehended by this section
7 shall be awarded to the lowest responsible bidder under such regulations as shall
8 be prescribed by law, and shall be subject to the approval of the auditor general
9 and state treasurer; no member or officer of any department of the government
10 shall be in any way interested in such contracts.

Amend by striking out on line 4 the word [capitol] and inserting in lieu thereof the word *state.*

Mr. FOX. Mr. Chairman: I move the adoption of the amendment. I suppose at the time the original was incorporated in the constitution we had no other buildings here. As I understand now there are quite a number of state buildings.

The CHAIRMAN. There will be other state buildings, but they will be a part of the capitol; although they will be separate buildings, they will all be a part of the capitol, and the effect of this might be to extend the jurisdiction to all the public grounds and buildings away beyond anything now exercised if applied to all state buildings.

Mr. FISHER. Mr. Chairman: That is the point I had in mind. It might apply to the state penitentiary, and it might apply to all the other penal institutions and state-owned institutions. It seems to me a dangerous change to make.

Mr. FOX. Mr. Chairman: I think Senator Fisher is right; I will withdraw my motion.

The CHAIRMAN. The motion being withdrawn, the amendment will be dropped.

ARTICLE III, SECTION 13.

The committee of the whole proceeded to the consideration of section 13 of article III and suggested amendments.

The secretary read the section and amendment submitted in writing by H. K. Siebeneck, Esq., of Pittsburgh, Pa., and also by the Civic Club of Allegheny County, Pittsburgh, Pa., as follows:

Section 13. Extension of Terms.

1 No term of any public officer shall be extended, nor his salary or emoluments
2 increased or diminished after his election or appointment, except that the salary
3 or emoluments of a judge may be increased.

Amend by adding at the end thereof the following:

And except that decennially such salaries shall be readjusted in conformity with the then existing requirements, in such manner as may be fixed by law, enacting a system general throughout the commonwealth.

The CHAIRMAN. If at any time any member of the commission has not had an opportunity to consider the suggested change before the chair puts the question or announces that the section has been dropped, if the member will indicate it, of course, the chair will wait. We have a big calendar here with a great deal of work to do, but if we are going to get through this week we will have to move with celerity.

Mr. PEPPER. Mr. Chairman: There are some cases which give rise to a little embarrassment because one is perhaps not ready to take definite responsibility as to the advocating of a proposition, and yet the proposition is one which seems deserving of at least passing consideration. Now, the matter before us at the moment is a case in point. It seems to me there is something to be said as an escape from the difficulty that comes from a flat prohibition of changing the emoluments of an officer during his term, that from time to time, at stated periods, there should be a readjustment of the whole scheme of compensation in the light of the then circumstances. That might be applicable to the case of judicial salaries and to the case of salaries of other important public officials.

The CHAIRMAN. We have endeavored to work that out with a salary board, but nobody seemed to be willing to serve on it that we could find.

Mr. PEPPER. Mr. Chairman: That effort was made, was it, sir?

The CHAIRMAN. Yes, sir. The chair hears no motion to adopt the proposed amendment, and therefore it is dropped.

The secretary read the amendment suggested in writing by G. W. Williams, Esq., of Pittsburgh, Pa., as follows:

Amend by striking out the words [except that the salary or emoluments of a judge may be increased].

The CHAIRMAN. I think that is covered in another section which Mr. Carson introduced in the tentative draft, providing that salaries and emoluments of judges might be increased. I think that is already in the tentative draft, and this proposition is to take those words out.

Mr. REED. Mr. Chairman: I do not know what made Mr. Williams do that unless he was mad at some judge's decision.

The CHAIRMAN. The chair hears no motion, and the amendment is therefore dropped.

ARTICLE III, SECTION 15.

The committee of the whole proceeded to the consideration of section 15 of article III and suggested amendments.

The secretary read the section and amendment submitted in writing by the Bureau of Municipal Research of Philadelphia, as follows:

Section 15. The Budget and the General and Other Appropriation Bills.

On or before March 1 of each year in which the legislature shall be in regular session the governor shall submit to the general assembly a budget. The budget shall contain a complete plan of proposed expenditures and estimated revenue for the two fiscal years next ensuing, including expenditures for charitable and educational purposes. The governor shall, at the time of presenting the budget to the general assembly, submit a bill containing the proposed appropriations for the fiscal years covered by said budget, as well as any bill or bills embodying any recommendations he may desire to make as to sources of revenue.

In submitting proposals for appropriations to charitable, benevolent or educational institutions not under the absolute control of the commonwealth, the governor shall at the same time submit a plan of distribution among the classes of institutions to be benefited. No item of the general or other appropriation bill shall appropriate any definite sum of money to any such institution or designate any one or more of such institutions as beneficiaries; but all such items shall appropriate a gross sum to be distributed among a class or classes of such institution (as such class or classes may be defined by law) only in accordance with a plan uniform in its application to all the beneficiaries in any class, said plan to be set forth in the appropriation act or to be prescribed by general law or by an executive agency created by law.

Immediately upon receipt of the governor budget the presiding officer of the house of representatives shall introduce in such house the said appropriation bill and also all bills relating to sources of revenue submitted by the governor.

The general assembly shall have power to increase, decrease strike out or otherwise alter any item in the appropriation bill or add new items thereto.

Until the appropriation bill shall have been finally acted upon by both houses of the general assembly, neither house shall consider any appropriation measure, unless the same shall be solely for the immediate needs of the general assembly, or shall have been submitted to the general assembly by the governor with the request that it be acted upon in advance of the appropriation bill.

The final adjournment of the general assembly shall not take place until a period of ten days shall have elapsed after the appropriation bill shall have been finally acted upon by both houses of the general assembly and shall have been presented to the governor.

Before final vote is taken on the general appropriation bill in either house of the general assembly, a separate vote shall be taken on each item making an appropriation for a class or classes of institutions not under the absolute control of the commonwealth, and such item shall be stricken from the bill unless it shall receive the support of two-thirds of the members elected to the house in which the vote is taken.

Amend to read as follows:

On or before March 1 of each year in which the legislature shall be in regular session the governor shall submit to the general assembly a budget. The budget shall contain a complete plan of proposed [expenditures and estimated revenues for the two fiscal years next ensuing, including expenditures for charitable and educational] *appropriations and complete estimates of the revenues and other funds available for appropriation for the two fiscal years next ensuing, including appropriations for charitable, educational and benevolent* purposes. The governor shall, at the time of presenting the budget to the general assembly, submit a bill containing the proposed appropriations for the fiscal years covered by said budget, [as well as] *and may also submit* any bill or bills embodying any recommendations he may desire to make as to sources of revenue.

In submitting proposals for appropriations to charitable [benevolent or educational] *educational or benevolent* institutions not under the absolute control of the commonwealth, the governor shall at the same time submit a plan of distribution among the classes of institutions to be benefited. No [item of the general or other appropriation] bill shall *ever* appropriate any definite sum of money to any such institutions or designate any one or more of such institutions as beneficiaries; but all [such items] *bills containing such appropriations* shall appropriate a gross sum to be distributed among a class or classes of such institutions (as

such class or classes may be defined by law) only in accordance with a plan uniform in its application to all the beneficiaries in any class, said plan uniform in its application to all the beneficiaries in any class, said plan to be set forth in the appropriation act to be prescribed by general law or by an executive agency created by law.

Immediately upon the receipt of the governor's budget the presiding officer of the house of representatives shall introduce in such house the said appropriation bill and also all bills relating to sources of revenue submitted by the governor.

The general assembly shall have power to increase, decrease, strike out or otherwise alter any item in the appropriation bill, or add new items thereto [.] *; but after the appropriation bill shall have become law it shall be unlawful to make any appropriation for any purpose, object or item included in the appropriation act, or in the appropriation bill as submitted by the governor, unless after such bill shall have become law the governor shall have requested the general assembly to make such new or additional appropriation.*

Until the appropriation bill shall have [been finally acted upon by both houses of the general assembly] *become law*, neither house shall consider any appropriation measure, unless the same shall be solely for the immediate needs of the general assembly, or shall have been submitted to the general assembly by the governor with the request that it be acted upon in advance of the appropriation bill.

The final adjournment of the general assembly shall not take place until a period of ten days shall have elapsed after the appropriation bill shall have been [finally acted upon by both houses of the general assembly and shall have been] presented to the governor [.] *for his approval; nor until ten days shall have elapsed after presentation to the governor of such other bills appropriating money as the general assembly shall have passed.*

Before final vote is taken [on the general appropriation bill] in either house of the general assembly *on any bill making an appropriation for a class or classes of institutions not under the absolute control of the commonwealth*, a separate vote shall be taken on each item making *such* an appropriation [for a class or classes of institutions not under the absolute control of the commonwealth], and *each* such item shall be stricken from the bill unless it shall receive the support of two-thirds of the members elected to the house in which the vote is taken.

The CHAIRMAN. For the information of the members of the commission it is the chair's understanding that the matter of substance in this proposed amendment is that which is found in the third paragraph from the top of page nineteen; all the other suggested amendments are merely matters of style.

Mr. McCORMICK. Mr. Chairman: I move the adoption of the amendment.

Mr. PEPPER. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. PINCHOT. Mr. Chairman: I would like to move an amendment in the way of striking out two words at the top of page nineteen in the second line. I move the omission of the words "to be set forth in the appropriation act or," my object in so moving being to take out of the legislature the fixing of the classes to which the appropriation would go or fixing the plan under which the appropriation is to be distributed at the same time that the appropriation is made, leaving it to read "in accordance with a plan uniform in its application to all the beneficiaries in any class, said plan to be prescribed by general law or by an executive agency created by law."

Mr. VOLL. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the committee agree to the amendment as amended?

Mr. FISHER. Mr. Chairman: It seems to me they are two proposals, which embody substantial changes. In the first paragraph, near the close, it is proposed to cut out the words "as well as" and insert the words "and may also submit any bill or bills." Reading as in the tentative draft, it seems to me, makes it mandatory on the Governor, when he submits his appropriation bill, to also submit the bill embodying any recommendation he may desire to make as to

sources of revenue. As changed here he will be relieved of the mandate placed in our tentative draft. He may then submit any bill or bills embodying any recommendation. It seems to me that it ought to be made mandatory on the governor, when he submits his general budget bill, to accompany it with any recommendations he has to make about the sources of revenue. I cannot see any purpose to be gained by this amendment, but it does sever the acts of the governor in making the recommendations for appropriations and in making the recommendations for sources of revenue or tax bills. I think it will be better for us to leave the two actions of the governor coupled as we have in the original draft. Now, the other substantive change is the one on page 19, in which it is proposed to add "but after the appropriation bill shall have become law, it shall be unlawful to make any appropriations for any purpose, object or item included in the appropriations act, or in the appropriation bill as submitted by the governor, unless after such bill shall have become law the governor shall have requested the general assembly to make such new or additional appropriation." The purpose of that is to place a restriction upon the legislature so that no subsequent appropriations may be made which have been the subject of action in the budget bill. It seems to me that that is an undue caution. The governor is vested with the power of veto, and he can veto items *in toto* or in part. It seems to me that we could well trust this matter to the legislature, because it will be more or less offensive to them when they come to act upon our work if we show too great suspicion of them or lack of trust. If the legislature wants to act on any item in the budget bill subsequent to the enactment of the budget, it seems to me it ought to be left free to have that right, and if it is not proper the governor can then exercise the veto power. This way it proposes to allow the subject of initiative to rest entirely with the governor in enacting legislation for appropriations subsequent to the general bill, if it has been touched upon in the general budget. I think that our tentative draft as originally drawn is better in those respects than these proposed changes.

Mr. McCORMICK. Mr. Chairman: It seems to me that unless this amendment is adopted it defeats the very object for which we are striving. If the legislators have the right to introduce special appropriation bills after the budget bill has been disposed of we are exactly back to where we were before, and all these appropriations to privately controlled charities could come in after the budget bill has been disposed of, and it would be just an open door to carry on exactly the same system that we are trying to get rid of. I feel that this is most important. The legislators in the discussion of the budget would have the right before the bill finally passed to bring up matters which they feel sufficiently important to lay before the legislature or the governor. I believe this is a most important amendment, if I read it correctly, and should be adopted. I may be wrong.

Mr. REED. Mr. Chairman: If I read this provision correctly, the legislature can suggest by amendment any additional items except to the bill proposed by the governor. A case might arise where in all honesty—I suppose we can presume the legislation will be honest once in a while—there might be an appropriation that should be passed, and the governor always has the right to veto. I would think it would be a pretty rare case in which the legislature after

considering the budget would then start in to pass appropriations for favored institutions.

Mr. FISHER. Mr. Chairman: My answer to the point raised by Mr. McCormick is that under the budget section as now proposed individual appropriations to charitable and benevolent institutions are absolutely prohibited. You could not at any time make special appropriations to individual institutions of that kind, but you can make them to a class after the budget has been acted upon. If this provision were not incorporated any member of the legislature might introduce a bill to make an additional appropriation to that class, but not to any individual in that class.

Mr. McCORMICK. Mr. Chairman: The creation of the class is within the power of the legislature, and they could create a class in which possibly one institution might be eligible, and I think it is a pretty dangerous thing to leave that question open, if it is necessary to do what I believe it is, to make appropriations to those institutions under the budget system. Many states permit the governor to make the budget with no power of the legislature to change it. Personally I think that is going too far, I do not believe in it; but I do believe in the presentation of a budget, after careful study and consideration by the parties responsible for the expending of the money, and I do believe in that being considered thoroughly by the legislature and proper appropriations being made; but I do not believe in the last days of the legislature in having permission granted to these legislators to introduce separate bills which may return to the old system which we are trying to get away from.

Mr. PEPPER. Mr. Chairman: It seems to me that what Mr. McCormick has just said is well worthy of the very serious consideration of the Commission. We have made a step in the direction of responsible government in recommending this budget system. We have recognized that the theory of the budget is not distrust of the legislature, but a desire to distinguish between the functions which are essentially executive and those which are essentially legislative. The budget system, as I understand it, is based upon the idea that things which have been done by the legislature in the past could more properly be done by the executive. It is not a question of distrust of one or the other organ of government, but it is an attempt to place upon the executive responsibility for that which is in itself peculiarly an executive function. This provision suggested by the Bureau of Municipal Research seems to me to be no more than carrying out to a sane and logical conclusion the theory upon which the budget is construed. We have safeguarded the possibility of unwise action by the Governor by giving to the legislature the plenary power to make changes when the budget is under consideration. Will not Senator Fisher reconsider his objection that this is an evidence of lack of faith in the legislature when it is pressed upon his mind that what is here done is merely to make the original consideration of the budget by the legislature so important and vital a part of its function that it will be done with all the care and consideration necessary to insure a first-rate piece of work at that time? If we are going to give an opportunity for the subsequent consideration of items included in the appropriation bill, you always have in the legislature that state of mind which is present in a legislative body when its action upon a matter before it is regarded as tentative and

not final. I submit that it is necessary to make action upon the appropriation bill final as respects the things that are embraced in a budget in order that you may get the best class of legislative attention to it during its transit through the legislature, and if there are emergencies, things not forseen, things not provided for in the budget, arising subsequently, those things can be taken care of by the legislature, because they are not within the prohibition of the suggested amendment. I hope very much that this amendment will prevail; and may I suggest, sir, also with respect to the first matter mentioned by Senator Fisher, that there really is not a difference in substance between the amendment proposed by the Bureau of Municipal Research and the tentative draft, because the subject matter is merely this: What recommendation does the governor choose to make, if any, respecting sources of revenue? We made it in the tentative draft mandatory upon him to submit such recommendations as he may choose to make; this amendment merely provides, and I think a little more logically, that he may submit such recommendations as he may choose to make. In the nature of things it is not sensible, when one stops to think about it, to make it mandatory upon a man to submit such recommendations as he may choose to submit. So that I think they have the advantage of us as a matter of style with respect to that point, and as a matter of substance I do think that the proposition advocated by Mr. McCormick is one that ought to carry.

Mr. McCORMICK. Mr. Chairman: I also feel that the amendment of the words "may also submit" is preferable to a mandatory clause upon the governor, because there may be enough sources of revenue already created and the governor would have no recommendation to make. Methods of taxation may be entirely satisfactory and he may not want to submit a bill, and therefore I think it is probably better to put it in the amended form. As the governor studies our needs, our expenditures and revenues, he may find our taxes have increased to such a point under existing legislation that no new legislation is necessary, and this gives him the right, if he wants to do it, to recommend certain legislation creating new revenue to cover increased expenditures. In regard to the second amendment which we are discussing, you will note that they have made provision for the governor upon his recommending to make such additional new appropriation to open the question again, if he sees fit to do so, and if any member of the legislature finds that there are matters that have been overlooked he can go to the governor and the governor can, if he recognizes the point, ask for the opening up of this question. If he is going to veto it he will certainly so state to the member of the legislature who will bring the question to him. I cannot see any advantage to refer it to him to have it vetoed, if he has the power that is given under this amendment to ask that the budget bill be opened up again and the proper changes made.

I was going to suggest that at the top of the page where the word "beneficiaries" occurs in the second line that we substitute the words "institutions, corporations and association" instead of the words "beneficiaries." I would like to make that amendment to the amendment. At the top of page 19, in the second line, the word "beneficiaries," I would suggest that the word "beneficiaries" be stricken out and the words "institutions, corporations and associations" be substitute.

Mr. FOX. Mr. Chairman: I will second that.

On the question,

Will the committee agree to the amendment to the amendment?

It was agreed to.

On the question,

Will the committee agree to the amendment as amended?

It was agreed to.

The secretary read the amendment submitted in writing by Hon. Alexander Simpson, Jr., of Philadelphia, Pa., as follows:

Amend by striking out paragraph 2 and inserting in lieu thereof at the end of the section the following:

No appropriation shall be made to any charitable, benevolent or educational institution not owned and controlled by the commonwealth.

Mr. McCORMICK. Mr. Chairman: I move that the amendment be adopted.

The CHAIRMAN. The chair hears no second to the motion, and the amendment is therefore dropped.

The Secretary read the amendment submitted in writing by Hon. C. Stuart Patterson, of Philadelphia, as follows:

Amend by adding at the end thereof the following new clause:

No bill appropriating money shall be introduced in the legislature unless it shall be previously submitted to and its introduction be approved or disapproved by the governor.

This amendment was not called up.

The secretary read the amendment submitted in writing by the Legislative Reference Bureau, Harrisburg, Pa., as follows:

Amend by inserting on line 37 after the word "bill" the words *and all revenue bills.*

Mr. CARSON. Mr. Chairman: If you adopt this amendment, that line 39 drops out?

The CHAIRMAN. I think so, yes; line 39 would drop out, and that would also do away with the next amendment proposed by Mr. McSparran, does it not?

Mr. REED. Mr. Chairman: That was Mr. Pinchot's amendment.

The CHAIRMAN. So that the Legislative Bureau amendment and the amendment suggested by Mr. McSparran, having already been acted upon, will be dropped.

The secretary read the amendment submitted by John A. McSparran, Master, Pennsylvania State Grange, at public hearings, April 21, 1920, as follows:

Amend by striking out of paragraph 2 on line 18 the words [to be set forth in the appropriation act or].

Further amend by striking out all of paragraph 3.

The CHAIRMAN. This amendment having already been acted upon, it will be dropped.

The secretary read the amendment submitted in writing by the Civic Club of Allegheny County, Pittsburgh, Pa., as follows:

Amend by striking out wherever it occurs the word [beneficiaries] and inserting in lieu thereof the words *institutions, corporations and associations.*

Mr. CHAIRMAN. I think that is the only place where the word "beneficiaries" occurs which is to be amended in that way. That amendment was on the bottom of the eighteenth page, the fourth line, where the word "beneficiaries" occurred, and I do not think it would be proper there to substitute those three words.

This amendment was not called up.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE III, SECTION 16.

The committee of the whole preceded to the consideration of section 16 of article III and suggested amendments.

The secretary read the section and amendment submitted in writing by H. K. Siebeneck, Esq., of Pittsburgh, Pa., as follows:

Section 16. Paying Out Public Moneys.

1 No money shall be paid out of the treasury, except upon appropriations
2 made by law, and on warrant by the proper officer in pursuance thereof.

Amend by adding at the end thereof the following:

Any violation of this provision shall deprive the violator of his office and the emoluments thereof.

This amendment was not called up.

ARTICLE III, SECTION 17.

The committee of the whole proceeded to the consideration of section 17 of article III and suggested amendments.

The secretary read the section and amendment submitted in writing by Kenneth L. M. Pray, Secretary, Pennsylvania Charities Association of Pennsylvania, Philadelphia, Pa., as follows:

Section 17. Appropriations to Charitable and Educational Institutions.

1 Appropriations for charitable, educational or benevolent purposes may be
2 made to a class or classes of institutions not under the absolute control of the
3 commonwealth, but engaged in work or service deemed by the general assembly
4 to be for the public good, provided such work or service conforms to such stand-
5 ards of excellence as may be prescribed by law, or by an executive agency
6 created by law. Every such appropriation shall be made by a vote of two-thirds
7 of the members elected to each house. Institutions receiving such appropria-
8 tions shall be subject to inspection by the commonwealth, according to law, and
9 shall make report to the general assembly, or to such person or persons as it may
10 designate, of the precise use made of such appropriation.

Amend so as to read as follows:

No appropriation for charitable or benevolent purposes shall be made by the general assembly, nor shall any such appropriation be paid by the state treasurer to any institution, association or corporation not under the absolute control of the commonwealth, after the fiscal year ending in nineteen hundred thirty-five. Appropriations made and paid to any such institution, association or corporation during the biennial period following the adoption of this constitution (or amendment) shall not exceed sixty per centum of the actual cost to such institution, association or corporation of the service rendered by it during that period to residents of this commonwealth unable to pay for the same, and by whom or on whose behalf payments have not been made equivalent to the full cost of such service. Appropriations made and paid to such institutions, associations and corporations for each succeeding biennial period shall be reduced by an amount equal to ten per centum of the actual cost of service rendered by such institutions to residents of the commonwealth unable to pay for the same, and by whom and on whose behalf payments have not been made equivalent to the full cost of such service; provided, that no appropriations shall be made by the general assembly, nor shall any such appropriation be paid by the state treasurer, to an institution or class of institutions whose work or service does not conform to such standards of excellence as may be prescribed by law or by an executive agency created by law.

Mr. McCORMICK. Mr. Chairman: I move the adoption of this amendment.

Mrs. MILLER. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. REED. Mr. Chairman: This is the same proposition which we debated at length with much earnestness, I believe, before the tentative draft was adopted. I do not see any change in it.

Mr. McCORMICK. Mr. Chairman: I had hoped that with the public hearings and the briefs that have been submitted the members of the Commission had received some new light upon this most important subject. I have here on my desk, as I suppose you gentlemen have, a brief submitted by the Pennsylvania Charities Association. I have yet to hear any answer to it. I was at the public hearings, and I have heard these debates here on the floor. There has been no answer to the question or principle involved, and in fact this commission in this budget paragraph that we have just adopted has recognized the principle that I have been advocating; in other words, that we cannot have class legislation, and you are adopting classes, that under the budget system as now adopted any institution in Pennsylvania that conforms, so far as possible, to the requirements as outlined in these classifications is eligible to an appropriation. What does that mean? That means if you appropriate money to the Crittenton Home in Harrisburg, as you do by your action today, it opens up the door to every Crittenton Home in every city in Pennsylvania; every hospital like the Harrisburg Hospital is entitled to an appropriation, if the Harrisburg Hospital is entitled to it. You are going to appropriate a lump sum for those classes; and what will be the result It will kill itself, because the needs and the demands are going to be so great that you can only appropriate a percentage of the amount of money. You are going to appropriate a lump sum, and each institution that comes under that will be entitled to its twenty-five per cent. or its ten per cent., and as those institutions make their applications and grow in numbers that percentage is going to be reduced unless we bankrupt the state of Pennsylvania; and I can wait ten, twenty or thirty years until it breaks itself down. But you have established a principle or the right of all charitable institutions privately controlled, conforming to the specifications as adopted by the budget system, to get heir pro rata share of it, and you will have proved that the principle I have laid down is the right principle and the only principle under which you can act. But I have only voted for the budget system to cover over the period which it will require to readjust the system in accordance with the amendment as offered here, and I hoped that we could have a further discussion, notwithstanding the probable ambitions of some of the members of this commission to get through with these matters. I feel that they are of too vital importance to pass over hastily. Certainly in the study of this question we have gotten some new light on it. The only argument that I have heard against it is that it would be unpopular; there are too many of these three or four thousand directors of these charitable institutions that do not want this present system disturbed, that are opposed to it, and therefore we cannot put this thing across, because it would be unpopular. I do not feel that we are here to build a constitution through the influence that might be exerted along those lines, because I believe that the state as a whole, when this question is put before it and they realize what it means, that they would not stand for the principal in the constitution of taking your money and my money, the taxpayers' money, and turning it over to privately controlled institutions; and the more I have discussed this with citizens of this state, the more convinced I am that the people of this state, when they understand this, are going to be behind the movement which is sure to come, just

as sure as we sit here today, to do away with the fundamental wrong of taking the taxpayers' money and turning it over into the hands of private corporations. Therefore, Mr. Chairman, I hope that we can have some discussion on this subject, or if they are convinced that it is the right thing, that we have a vote in favor of this amendment; but I feel that we, as representatives of this great state, in sitting down and studying these problems are not acting on questions of policy in the creation of this constitution but on questions of fundamental principle, which I know down in the bottom of your hearts you men agree with me that I am right.

Mr. PEPPER. Mr. Chairman: There is a real difficulty in complying with Mr. McCormick's request for a discussion of this subject, because anybody who discusses it must necessarily take one of two sides; he will either be on Mr. McCormick's side, in which case it is superfluous for him to say anything, or he is on the other side, in which case what he says is not recognized by Mr. McCormick as being argument on the subject, but as being perverse aherence to a proposition with which he disagrees. Therefore I can hardly hope to comply with his suggestion in saying what I am about to say, which is this: That here we are once more face to face with the fundamental question of the administration of charitable and benevolent trusts in different parts of this commonwealth. Are we to proceed upon the theory so earnestly pressed upon us that there is no such thing as co-operation in the administration of those trusts between government and private initiative? Are we to take the view that there are two courses, and two courses only, which are worthy of consideration and of adoption? One course is that the trust for the benevolent, educational or charitable use must be administered exclusively out of resources privately supplied; the other is that the trust must be administered out of funds publicly supplied with the correlative requirement of absolute state control. The latter alternative involves, of course, the creation of a great piece of central machinery to systematize the administration of charitable and benevolent work under the control of the state. But fundamentally the question is whether there is only a single choice between private resources, privately raised and privately applied to the administration of charitable and benevolent trusts, and the government control exercised to the limit as the correlative of the receipt of a state appropriation. I say that that is not the necessary choice, that that is not the necessary alternative, but that in between those two extremes you find the safe and salutary way; the private administration and private control of the charitable and benevolent trusts, supplemented to the extent of public service by an appropriation from the central funds, safe-guarded both in respect of its application and actual administration by the provision that we have been at pains to insert in our carefully prepared budget system. Why is it gentlemen assume that there is some superior moral or economic merit in the adoption of one or the other of two extremes, as if our experience in life has demonstrated to us that it was always one extreme course or the other extreme course which was the right one? The fact is, as all experience shows, that while one of two extremes is sometimes the right course, more often there is an element of error in each of two extremes, and the wiser course is sometimes found somewhere between Scilla and Charybdis. That is the case

here; we have not a theoretical situation to face, we have a great empire to administer in the commonwealth of Pennsylvania, and we have institutions which are facts to be taken account of. We must deal with them as facts, and not in accordance with purely academic theory. The fact is that if you take an institution of the type which commends itself to careful executive selection—and that is what we provided for—and if you supplement the resources which it obtains privately and from private citizens by an appropriation administered under the provisions of the administrative system that we have approved, to an extent not greater than is compensatory for the public service rendered by that institution, you have a system which combines the advantages of governmental assurance that the public interest is being protected with the human element which is always characteristic of a charitable trust privately administered. You have a wise combination of the good features of your two extreme courses; you avoid the evils that are incident to either of the extremes; you have a result which in my judgment is economically sound, is administratively wise and is made the subject of an experiment in budget-making and legislation which is well worth making under the conditions that we have developed in the tentative draft.

So I submit, sir, that while what I have said will not be regarded as argument by those who are committed to the proposition that wherever you face a situation in life either one of two extremes is the only permissible choice that a wise man can make, yet for those whose experience has been that a combination of the inherent merits of two extremes is apt to be nearer the wise and safe course, what I have said will be regarded as a vindication of what this Commission wisely decided upon in the first instance after careful debate, a conclusion to which I believe it will adhere after this discussion is concluded.

Mr. McCORMICK. Mr. Chairman: I feel that Mr. Pepper has opened up some very important questions. In the first place, Mr. Pepper states that he thinks it is wise that this dual system should be continued of state and private contributions to privately controlled charities: I guess he will acknowledge that the minute the state starts to contribute money to privately controlled charities that the private contributions cease. That is easily proved. You can go through the state's own figures and read down the appropriations that we have worked out and will submit them at any time. It is not only so in privately controlled charitable institutions, but it is so in educational institutions. Privately controlled institutions getting no money from the state can go out and raise endowment funds of millions of dollars, I do not know of an institution in the country, if it gets a large part of its maintenance from the state, that has been able to raise any large endowment. I do not think it is possible. There are nine charitable institutions in Harrisburg, all getting a State appropriation, and their private contributions have in nearly every case ceased. In hospitals like the York Hospital, they cease altogether. They used to be entirely supported by the people of York, and so on down the list. You are drying up charitable initiative in this state, and further than that, who is to determine what privately controlled charitable institutions are to get these appropriations? If all of them, are to get them, we as practical men know that it is an impossible thing to give them all the money they need to

carry on their operations; and yet if you discriminate and say only certain of them shall get them, then, in my opinion, you are adopting a principle fundamentally wrong, just as wrong as any taxation that you can pass with discriminatory provisions of taxation; and if you cannot have in the constitution a discriminating provision in the raising of money, why should we in the making of a constitution put something in the constitution that permits discrimination in classes in the distribution of money? We have heard nothing on these points. All the questions that are raised and what I want to satisfy my mind about, is that when those points are brought up, I want to hear them brought up, to hear whether or not there is an answer to them. Now, if I am wrong, and especially in this thing, in the statements I have just made, I want to know. I may be wrong and I want enlightenment, but all the arguments I have heard are questions of expediency; because we have something that is wrong in the state we have to carry it on. We recognize that and introduced an amendment. We suggested a gradual change so that no hardship will be done. In New York they cut it out, they had the courage to cut it out, and over night in the legislature they cut it out, and here we give ten or twelve years, because we have already pointed out a principle and they ought to have a chance to correct institutions as they existed in the past and come down to a proper basis Either funds furnished by their own people, or local taxation, or by funds furnished entirely by the state and under state control, or carried on by voluntary contributions by their own friends in the communities in which these institutions exist.

Mr. GORDON. Mr. Chairman: Mr. Pepper's remarks reminded me, as his remarks often do, of a great lawyer and an address which he delivered in the British Parliament—whether it was Lord Halifax or Lord Somers I do not now recall—but he was accused of being a trimmer, and he defended his position as a trimmer by saying that all good things were a result of trimming, that the temperate zone trimmed between the extreme cold and the extreme heat, that the Church of England trimmed between Rome and Geneva, and that the monarchy of Great Britain trimmed between the absolutism of the Czar and the anarchy of the American Colonies; and Mr. Pepper has alleged that those who assert a principle which he calls an extreme to the conclusion of some other extreme is guilty of a lack of statesmanship or practical government. Now, trimming is a good thing, and it is very often an escape from a disagreeable situation. It is a cover from meeting a real argument.

Our constitution upon the subject of appropriations to institutions not governed by the state is not the result of any trimming, or the avoidance of one extreme or another. The prohibition of appropriations to such institutions recognizes the validity of the fundamental proposition that no state money should be given for private administration; but at the time of the adoption of the first constitution, and I think the second, and I think the third, and the existing one, it was recognized that in the then state of society, in the then social conditions in the then financial conditions of the sparsely populated commonwealth, the state could not erect the number of charitable and educational institutions necessary for the well-being of the people, and therefore it would avail itself of existing private institutions under certain conditions, and the condition was that it would require

a two-thirds vote to make such an appropriation, while all other appropriations to state institutions and to most other purposes required only a majority vote; and therefore the requisite of a two-thirds vote for the making of appropriations to institutions not under state control is a recognition of the exceptional nature of that appropriation. There is also the other principle forbidding appropriations to institutions of a sectarian or religious character. There the inhibition is absolute. As to charitable or educational institutions, when transortation was by horse or probably a slower means of communication, when the Connestoga wagon probably took the child to school some distance off, when the nearest surgical appliances were probably one hundred miles distance, there the commonwealth permitted appropriations because of the necessity of the case, not as a recognition of the invalidity of one extreme or another; but the recognition of the fact that state ought not to give the money of the people for private administration unless the public good required it, and therefore it allowed it. Those exigencies, those reasons, sparse population, long distances, slowness of communication, all those things have disappeared, comparative poverty—that has disappeared. We are a rich commonwealth. Some time ago the roads were mended by the industry of the adjacent farmer who came out and worked out road taxes by work upon the road. To-day this state makes a loan of fifty million dollars for the repair of the roads. That was done by a legislature in which I think the farmers did not predominate; but anyhow the state is now rich enough to perform all its proper functions, and the maintenance of the poor, the administration to those in distress, who cannot care for themselves, is a state function and not a private function, and for that reason the restriction of a two-thirds vote was put around such appropriations. But it recognizes the thing as being tolerated only because of the necessity of the case, the suffering of humanity; they required that it might be done in such cases. In such cases the idea of the *quid pro quo* was never abandoned. The appropriation was made, not as a benevolence, not to help the institution, not to forward the laudable purposes of those who may have founded the private institutions, but it was made in order that that institution might give charitable aid to the poor of the state. The hope is still within my breast, for many reasons, though I do not hope to change the action of this Committee in the past; this was discussed very thoroughly, and the combative nature which Mr. McCormick has brought back from Paris and other places on the other side of the Atlantic may invite discussion, and I do not desire to embark in fruitless discussion. I would very much like to convert this commission to the idea of Mr. McCormick, because I am converted to that idea, and I believe we all believe in it, I believe even Mr. Pepper when he comes to reconsider his argument, which was so attractive and plausible, will see that the existing provision of the constitution is not between two extremes. Let us say also to him, not critically, but kindly, in reference to the statement that in life the truth is found between two extremes and not in either, that I do not think that is the case at all. The truth is not found between these extremes, the truth very often is found to be composed of a part of each extreme, and thus drawing from each and a new medium is formed through which truth prosperity and practicable administration is very often susceptible. But I dislike to hear a gentleman whom

I so highly esteem and whose powers as a lawyer are so great and so generally recognized utter a fallacy such as that, that truth is found between two extremes.

Mr. Pray's amendment, which is immediately before us, ought to commend itself to Mr. Pepper for the very reason which he has adduced; that is to say, Mr. Pray does not want to do anything radical, if it is radical, as Mr. Pepper is afraid of. Mr. Pray does not want to strike anything down ruthlessly, if it is the sudden and deadly blow Mr. Pepper is afraid of. Mr. Pray wants to do the safe and right thing of preparing a great public experiment, which ought to die, and which is bound to die, to prepare it for death by slow stages and by gradual asphyxiation. Mr. Pray says that these institutions ought not to spend the money of the people by private hands, but that the state ought to supply its own poor and administer to its own needy. These institutions exist and we are not going to kill them at once, but after this constitution is adopted no more institutions except those under public control should get any money to expend for such purposes. Those who got it in the past shall only get sixty per cent. for a certain period, and then there shall be a gradual diminution in the flow of the artery of life from the public treasury into the privately maintained institutions until by and by it shall cease altogether, and thus painlessly, happily, they will be restored to the place they ought to occupy, the place of private benevolence, the place of charity, real charity, which doeth all things, which suffereth all things, which welcometh even death that it may be consistent.

Mr. PEPPER. Mr. Chairman: It has fallen to my lot in a lengthened pilgrimage to hear many sermons of which the impression that I gained was this; that there was nothing in the discourse, however admirable, that rose to the level of the text with which the speaker began; and excellent as is everything that Judge Gordon has said to us, nothing seems to me to reach the high level that was attained when he quoted from that distinguished statesman who pointed out in language far better than it would be possible for me to choose the truth upon which I relied in making my opening remarks, a truth which I was careful to note Judge Gordon undertook neither to qualify nor to gainsay. I did not say, of course, it is difficult to suppose that anybody would have thought that I said, that the truth was always found between two extremes. On the contrary, when the stenographers' notes are examined it will be found that I said this: That while it sometimes happens that when two extremes are proposed the truth is found in one of them, the experience of life is that usually the truth lies somewhere in between, and is found to be made up of those elements which give attractiveness to each of the two extremes, but in its extreme form is combined with matter which does not properly belong there, and vitiates the grain of good which the extreme contains.

With regard to the proposition that is before us, it seems to me that the vice of the argument of my friends on the other side consists in this: They point to a long experience, and it is, I think, an unfortunate experience in this state, of attempting to do through the legislative department of the government a job which is not legislative in its nature. The reason that we had to have the provision of the two-thirds vote in the case of private institutions is because it is not the business of the legislature as such to go into the administration

of institutions for care of dependents. We went into an unsound system when we left it to legislative discretion to determine how and to what extent the charitable interests of the state were to be administered through institutions in private control, and we tried to mitigate an evil system by putting a check upon the action of the legislature in the form of a two-thirds rule. What we are now doing in the tentative draft is to transfer to the executive department of the government a job which is in its nature executive. For the first time, in dealing with our charitable interests, we are placing the responsibility where it belongs, and we are fastening upon the governor or such executive agency as may be established by law the responsibility for the administration of the state's charitable trusts to the poor and the dependent.

The CHAIRMAN. I think Mr. McCormick is mistaken in his assertion that state aid to an institution results in drying up the springs of private benevolence. I do not want to debate that. It is an interesting question. I had occasion to look into it somewhat in its relation to educational institutions. I find that what happened is that there is less tendency in the case of educational institutions to give money for the current support of institutions that derive their maintenance from the state, but that very large private benefactions are set free for maintenance purposes, to the building up of plants and equipment of institutions of that type. The recent splendid gift of the Mayo brothers to the state university of Minnesota is an illustration of what I mean. I do not think it is true that state aid to such institutions as we are discussing operates to dry up the springs of public benevolence, but suppose it is true that what we are dealing with is not the question of how best to irrigate the spring of public benevolence, but the question is how best to take care of the dependents of the state. What are the conditions under which they will be best cared for? I say that experience shows that the responsibility for these dependents in institutions privately controlled, administered under private initiative, with such support as is necessary for the public services rendered derived from the public treasury, creates the condition under which the most human and intelligent and sympathetic treatment is given to the dependent who ought to be, if he is not, the primary object of our concern.

Mr. GORDON. Mr. Chairman: May I ask Mr. Pepper a question?

Mr. PEPPER. Mr. Chairman: Certainly.

Mr. GORDON. Mr. Chairman: Do I understand that Mr. Pepper advocates that a privately conducted institution is the better institution for the disbursement of charities than a public institution and preferable?

Mr. PEPPER. Mr. Chairman: I say this to Judge Gordon, that on the whole a group of people acting, as we lawyers say, voluntarily, I mean on private initiative, and moved to their act by the consideration that moves people who are not in official positions, that on the whole an institution administered by such people gives to the dependents better, more sympathetic, and more intelligent care and protection than is given to them by a bureau-controlled public charitable agency.

Mr. GORDON. Mr. Chairman: Would not that be an argument against the professional nurse because of her professional character and disinterestedness?

Mr. PEPPER. Mr. Chairman: I should think not, sir, no more than it would be an argument against the value of the equipment of a lawyer to practice law or a doctor to practice medicine.

Mr. GORDON. Mr. Chairman: I would like to ask Mr. Pepper whether he does not thing that charitable aid is best administered by a person who acts impersonally, disinterestedly and unemotionally?

Mr. PEPPER. Mr. Chairman: I think it is best administered by those who act disinterestedly, but not as administered by those who act impersonally and unemotionally; on the contrary, I should make no more urgent prayer than if ever I had to be administered to by anybody, it would be by somebody who had both emotion and personality. That is my answer to Judge Gordon's question.

Mr. GORDAN. Mr. Chairman: Since Mr. Pepper puts it on that ground, he will pardon me, and we all differ in these respects, we men, I should like, if I needed administration in that line, to have it in the hands not of those whose hearts were wrung in every act of administration, but from those who act professionally, disinterestedly, unemotionally and impersonally.

Mr. PEPPER. Mr. Chairman. These things are matters of choice. I am sure if Judge Gordon was ever in need of ministration, the heart of these who ministered to him would be wrung and his wish could not be gratified. But the proposition to which I referred, Mr. Chairman, is this: That we have suffered in the past from entrusting to the legislature a job which was not legislative in its nature; that we are now proposing to put into the hands of the executive a piece of work that is essentially executive in its nature, and for the administration of which we have made wise provisions in the tentative draft; that the thing to be considered in debating this question on principle is not the effect of what is proposed upon private sources of benefaction and generosity but the thing to be considered is how can the dependents in the commonwealth of Pennsylvania best be provided for; and upon that point my proposition is that the institution privately controlled, to some extent privately supported, is more humane and more effective and on the whole a more desirable agency for the care of the dependent than the institution which is a mere agency of a political or administrative bureau or system established and controlled by the state: and I believe, sir, that experience under the system which we are venturing to advocate, that experience under that system will show that the state's money will under no conditions under Heaven go direct to the poor so effectively, so directly, with so little diversion, as in accordance with the plans which we are here proposing; and I very earnestly hope that we shall not be misled into what I regard as the dangerous paths that lead to the one or the other of these vicious extremes, but that we shall hold fast to a course that is between the two, that combines the elements of advantage in both, and, as Judge Gordon said so well in closing, because it combines the elements of truth that are found in each, stands vindicated as being somewhere near the whole truth which we are seeking.

Mr. McCORMICK. Mr. Chairman: Why is the principle that I have advocated vicious?

Mr. PEPPER. Mr. Chairman: I think it is vicious for two reasons. I think it is vicious in the first place because, as I have said a while ago, it seems to sacrifice the interest of the dependent, which is the thing that I am concerned with, to the desire to do the thing that is most economical to the state.

Mr. McCORMICK. Mr. Chairman: How does its sacrifice the patient, the dependent?

Mr. PEPPER. Mr. Chairman: It tends to substitute, as it seems to me, for the system of charitable institutions which we have, and which I think will be wisely administered under the law as we advocate it, it tends to substitute for them two classes of institutions, one of them institutions altogether privately supported, and on the other hand institutions altogether state controlled. With regard to institions wholly state controlled my objection is that they are non-human agencies of a political sort which do not render, excepting in certain specific specalized cases, the best care and treatment that you can find for the dependent; and in regard to the others, the institutions privately controlled and privately supported, if you deny to them the supplementary aid which will come to them under this section you deprive them of the means of rendering their full measure of public service to the largest possible number.

Mr. McCORMICK. Mr. Chairman: Do you know that men who have made a special study of it have gone on record that the ideal system is the state-controlled system of a certain standard and the privately controlled institutions with the freedom of research, freedom of experiment, with the freedom of men running side by side in cities, that that system in this country has proved to be the most acceptable and better adopted to the care of dependants.

Mr. PEPPER. Mr. Chairman: I have heard that asserted with the same confidence and authority with which Mr. McCormick has asserted it, and I have heard the opposite asserted with equal confidence and almost equal authority, so that I do not feel bound by either expression of opinion. I am free to choose, and I venture to hope that this Commission will choose, and I believe that the people of the state will choose that system of charitable administration which provides under proper supervision and proper oversight a reasonable amount of state money for administration under local initiative and with human touch and with direct contact with the beneficiary who is the object of our care.

Mr. McCORMICK. Mr. Chairman: Will Mr. Pepper agree with me that the number of institutions receiving state aid under this system will greatly increase and that in fact any new institutions which may be created at any time will be eligible for their pro rata share of the funds appropriated in lump sum?

Mr. PEPPER. Mr. Chairman: In answer to the question, I think that whenever you fasten great responsibility upon one official or upon an executive agency directed by that official, you must ignore possibility that he will not be found worthy of the responsibility laid upon him. I think it is possible that an executive agency established by law under this constitution will not have the courage to discriminate between institutions that conform to standard and those that do not. I think it may be derelict in its duty, but I am also full of hope that that will not be the case, that we are setting up a piece of machinery that will work, and if it works the discrimina-

tion between the worthy and the unworthy, between the institution that conforms to the standard and the institution that does not conform to the standard, will be perfectly defined, perfectly feasible, and perfect practicable. I have the confidence to believe that this discrimination will be made, because if it is not made under the best system that we are capable of devising, I do not see why we have any reason to expect that the necessary discrimination between good and evil between the wise and the unwise, between the fit and the unfit, will ever be made in any department of the administration of public trusts.

The CHAIRMAN. Is there any further debate on the motion?

Mr. GORDON. Mr. Chairman: I notice the very natural impatience of the chair to put this question, knowing what the result of the vote will be; but I would like to enter by dissent from the statement of Mr. Pepper that experience teaches that privately administered charities are best. On the contrary, I assert, and I trust he will pardon me if I assert with a little emphasis, that all history teaches that privately administered charities have often, have generally, unless they have been under public supervision, been conducted with inhumanity, discrimination and injustice. I assert that the administration of the charities as to the insane, for instance, was a blot upon civilization until the laws of the various states came in and tore away from the face of private charity the veil which enabled it to practice cruelty. So many years ago that I shall not resort to the enumeration, in the building which formerly stood where this building now stands, I offered a bill for the regulation for the insane institutions of this commonwealth, which is the law today, with some changes. It was referred to a certain committee, and we went around the commonwealth and visited the various institutions of a private and semi-private character where the insane were kept, and we found a revolving condition. I ought to say that the stimulus to the legislation which I then had the honor to propose and to carry through the legislative body came from a commission of which Dr. Weir Mitchell, George L. Harrison and one or two others whose names I cannot recall, and I am not sure the ancestor of my colleague, Judge Reed, was not one of them, that the stimulus for that legislation came from that body of men who were appalled at the cruelty of private charity. And what is true of the insane is true, I think, of all institutions, whether they call themselves charitable or not, where man, mere man, has the control of his fellow-men, even though temporarily, without public supervision. I believe the best charity that is administered anywhere is that which administered by the representatives of all the people in a public institution blazoned with public light.

These remarks probably have not much relation to the immediate amendment before this body, but I do wish to dissent from the suggestion that private charity is more benevolent, more beneficial and more to be trusted than the charity of the state dispensed by public servants of the people.

The CHAIRMAN. Is there any further debate on the question?

Mr. CARSON. Mr. Chairman: I do not want to prolong the discussion, and do not intend to, but I do not want it to be thought that Mr. Pepper is to carry the brunt of the discussion in support of what this commission has already determined. That would hardly be fair. The debate has been ably conducted, as might well be said,

between masters of the art; but I cannot for the life of me see why gentlemen should permit their intellects to remain so tightly in bondage to a theory as to be unable to see anything in a suggestion for freedom of action outside of the operation of that theory. Now, it is easy enough to stand up and say that the people's money should be expended solely by the people's representatives. That is a captivating theory, a captivating phrase, and one which lies at the very base of our institution; but it can make slaves of that theory, it can absolutely ignore the practical features of a practical situation. The situation is this: Here are sufferers all over this great commonwealth, of all ages, of all classes and conditions, and of both sexes, and they need aid, and we are discussing whether the fund which is placed at the disposal of the government for their relief shall be administered by practical politicians, appointees of a political machine, or whether that administration shall take the healing influence which comes from what has been properly called the emotional and unselfish side of human nature. I cannot believe that it is necessary to carry logic so far. If the gentlemen will only look—I have not had the time to study these nice questions of political and civic economy so as to carry statistics against statistics—but I did take up the Encyclopaedia Britannica and looked at the article on hospitals and hospital management, and I saw gathered there a great deal of international information. The balance of account that is stated there is not as Judge Gordon thinks. It says that in the administered charities there is a disposition for the administration to become mechanical, unfeeling, selfish and inert, that the appointees of a political power, holding their places after having secured them through influence, become utterly indifferent to all the broadening effects of education, new systems, competition and other things which tend to improve and elevate the standard of service. So I think it is by no means clear, as these gentlemen say—because the phrase becomes so glittering that it dazzles their mind almost to the point of blindness, and they are blinded by the excess of their own brilliancy—that because it is the people's money it should be administered solely by the people's representatives, ergo the best result should be accomplished by that, and you must extinguish one after the other those lights which are in sick chambers at all hours of the night for the relief for the suffering poor. I trust that the amendment will not prevail.

Mr. FISHER. Mr. Chairman: I do not want to lengthen this debate. I fully expressed my views when we had the matter up for consideration originally. I merely want to say that conditions and interviews and the reading of the public press have simply strengthened my convictions that we were right in our original decision. I believe that the great body and masses of people would resent our laying violent hands upon the charitable institutions of this state.

Mr. GORDON. Mr. Chairman: Not violently, gently.

Mr. FISHER. Mr. Chairman: The hands of homicide laid on gently and with tender words and modulated voice! This means death to the present agencies which administer to the great body of the dependents of this state. It seems to me that we lose sight of our objective. We hear much talk about principal. The principal which seems to be violated in the minds of some is that we are giving up public money for private institutions. That is not the fact. We are giving public

money for public purposes, in the administration of which private institutions are employed. The purpose is commendable, and a most worthy object to which we can consistently contribute public money. I recognize the rights of property. I do not like to see people unduly harrassed and burdened with taxes, but there are some things that rise above these considerations, and they are considerations of humanity. I do not have such a tender regard for the subjects of taxation in this state that I am willing to see those helpless wards, which are now being administered to all over this state by these worthy institutions cast out to the chance care of whoever may administer to them. What will become of them?

Mr. GORDON. Mr. Chairman: May I ask where he gets that idea from? Who is advocating that these persons shall not be administered to?

Mr. FISHER. Mr. Chairman: Because they are simply left without provision whatever.

Mr. GORDON. Mr. Chairman: On the contrary, the state will have to spend very much more than it has hitherto spent.

Mr. FISHER. Mr. Chairman: That is merely a statement. We do not know what the state will do; that is a matter of conjecture; all we know as a fact is that we have a system here which has been established through a long tearm of years and that that system has been doing a very beneficient work satisfaction of a large part of the people in the commonwealth. Now, I say let us not fix our eyes upon the cost and let us not consider too much the agency, but let us think of the purpose of this work. Judge Gordon has raised a very important question. If we gradually put to death the system under which we administer our charity, what will become of the objects of our charity? It is said here that the people will rise up and in the goodness of their hearts take care of them. That is a theory. I once heard a great statesman in this country, quoted as having said that in case of war a million men would spring to arms over night, and I lived to see that great war and that great emergency arise, but I did not see the million men spring to arms over night. We had a million men, but not the arms.

Mr. GORDON. Mr. Chairman: We did not see the great statesman.

Mr. FISHER. Mr. Chairman: I do not believe we can trust with great safety to some impulse that we may conceive exists in the hearts of the people.

Mr. McCORMICK. Mr. Chairman: How are the poor taken care of in Senator Fisher's county?

Mr. FISHER. Mr. Chairman: In a variety of ways, and in many instances it is administered purely by local authority most shamefully. It is one of the disgraceful things of this state that in many of the rural sections our poor are inadequately and inhumanly taken care of.

Mr. McCORMICK. Mr. Chairman: Then we ought to change our system.

Mr. FISHER. Mr. Chairman: And that just raises the question.

Mr. McCORMICK. Mr. Chairman: I want to change the system.

Mr. FISHER. Mr. Chairman: There is a great good impulse in the hearts of the people to do the generous thing towards those who are in need and suffering; is that not true? If you make this thing a purely administrative, political or governmental machine you lose

the benefit of the impulses that well in the hearts of the people who now give help and support and are the soul of the administration of your charities all over the state. I wish I felt at liberty to quote one who sat in this chamber for many years, one for whom I have the highest respect as a person, and with whom I had occasion to disagree on political subjects a great many times. I had a letter the other day from Senator Flinn, and I want to say in my service with him, covering eight years in this body, there was no man whose heart had a more tender regard for all humanitarian projects that Senator Flinn, and he always stood for generous appropriations to the institutions that were doing humanitarian work.

Mr. GORDON. Mr. Chairman: And for other purposes.

Mr. FISHER. Mr. Chairman: And for other purposes where humanitarian objects were in view. The other day I met him and he expressed himself on this subject most forcibly. I then received a letter from him after he had received Mr. Pray's argument and in the letter he expressed the hope that he might be able to write me a letter analyzing and answering Mr. Pray's argument. I am sorry to say that I have not yet heard from Senator Flinn, but he is simply an example of the outstanding public men in Pennsylvania of good impulses who believe that we ought to continue the present system. The object of this provision in the constitution is to strangle gradually our present system of administering charity. Is it necessary? Suppose the arguments here presented are true, that there is abuse crying evil. It is supported by the votes of the members of the legislature who come fresh from the people every two years. The revenue that are disbursed here must come from the hands of these men who go back to their suffrage every two years. If it is such an evil thing and is so heinous in the eyes of the people, why cannot they be trusted to send men here who will correct this evil, without our attempting to put our hands upon its life in this constitutional enactment? Let us trust the legislature to take care of it. It may be that some better and more humane and effective system of administering the state's charity may be found. I do not believe that it has been found in any state of the Union to this day, but if it may be found let us leave our fundamental law open so that the legislature can adopt whatever beneficient measures experience may demonstrate descriable.

I want to say that I believe if we adopt this measure we will offend the best element of the people in the state of Pennsylvania and that we will have taken a step towards destroying the best impulses in the hearts of our people.

On the question recurring,

Will the committee agree to the motion?

It was not agreed to.

The secretary read the amendment submitted by Dr. Francis Newton Thorpe, Commissioner, as follows:

Amend by striking out the word [educational] on the first line.

Mr. THORPE. Mr. Chairman: I move that this amendment be adopted.

Mr. PEPPER. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. THORPE. Mr. Chairman: I do not wish to debate it, but just to state briefly the reason for making the change. When the committee met in Philadelphia to iron out some seeming differences and to make it homogeneous this word "educational" was put in section 17 to harmonize with section 18. I made no objection at the time, but I do not think there is any authority for putting the word "educational" in there. I think the purpose was to keep benevolent appropriations distinct from educational appropriations. I merely bring it to the attention of the committee at this time.

Mr. FISHER. Mr. Chairman: May I ask a question? Is it the intention that the appropriations to educational institutions shall be covered in another section of the constitution.

Mr. THORPE. Mr. Chairman: Yes, sir.

On the question recurring,

Will the committee agree to the motion?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE III, SECTION 18.

The committee of the whole proceeded to the consideration of section 18 of article III and suggested amendments.

The secretary read the section and amendment submitted in writing by Charles B. Little, Esq., of Scranton, Pa., as follows:

Section 18. Certain Appropriations Forbidden.

1 No appropriations for charitable, educational, or benevolent purposes shall
2 be made to any denominational or sectarian institution, corporation or associa-
3 tion, nor to any person or community, except that appropriations may be made
4 for pensions or gratuities for military services, and that pensions may be pro-
5 vided for the retirement of judges and of other employes of the commonwealth
6 and its agencies, including the employes of the public schools.

Amend by adding at the end thereof the following: *and except that appropriations may be made for the relief of persons and municipalities hereafter injured or damaged by surface subsidence resulting from past or future mining of anthracite coal.*

Mr. KELLY. Mr. Chairman: I move the adoption of the amendment.

The CHAIRMAN. May I ask for information, Judge Kelly, whether this in conflict with the amendment suggested by the committee that was here from the Scranton Board of Trade?

Mr. KELLY. Mr. Chairman: I think not, sir. I think, on the contrary, it is in harmony with it and will do away with an apparent conflict which might exist between section 18 and the proposition submitted by the people of Scranton.

Mr. PEPPER. Mr. Chairman: I second the motion.

The motion was agreed to.

The secretary read the amendment submitted in writing by G. W. Williams, Esq., of Pittsburgh, Pa., as follows:

Amend by striking out on lines 4, 5 and 6, the words [that pensions may be provided for the retirement of judges and of other employes of the commonwealth and its agencies, including].

This amendment was not called up.

The secretary read the amendment submitted in writing by John Thiel, Esq., of Philadelphia, Pa., as follows:

Amend by adding at the end thereof the words: *and appropriations may be made to communities suffering from grave disasters or calamities.*

This amendment was not called up.

The secretary read the amendment submitted by the Legislative Reference Bureau, Harrisburg, Pa., as follows:

Amend by inserting on the first line before the word appropriations the words *disbursements of.*

Mr. FISHER. Mr. Chairman: I am not sure that I fully grasp that. It is a question of style I should think. I am not quite sure where the sentence would come in.

This amendment was not called up.

The secretary read the amendment submitted in writing by Hon. William Kerper Stevens, Commissioner, as follows:

Amend by striking out on line 2 the words [denominational or sectarian] and inserting after the word "association" on line 2 the words *for denominational or sectarian use.*

Mr. STEVENS. Mr. Chairman: I move the adoption of the amendment.

Mr. KELLY. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. STEVENS. Mr. Chairman: The amendment which I have introduced is not for the purpose of making any change in the action that has heretofore been taken by the Commission, but rather to remove a misapprehension which I found rather general and which, it seems to me, in view of the action of the Commission and of the discussion, especially the legal discussion, is baseless. I read the discussions and listened to them today with a great deal of interest, and I believe the action which the Commission has taken is sound and is for the best interests of the commonwealth and will be approved by the people and be of great benefit to the afflicted needing aid; but it seems to me, while we are about it, if there is any misapprehension in the language, it should be removed. As the Chairman well argued, and I think there was no dissent from the soundness of his legal position, the supreme court of the United States in construing the language, or practically the language of this constitutional enactment, decided that the character—the sectarian or denominational character—of an institution was to be determined solely by its purpose, solely by its purpose. I understand that this construction has never received the direct sanction of any judicial decision in this state, but the soundness of the interpretation by the supreme court of the United States has never been questioned, and we have in the state an interpretation which has been made by authority. We have the legislative interpretation in the enactment of laws, a construction made with the approval of the people. We have the interpretation made by political departments of the government, charged with the duty of acting under the legislation, and this contemporary construction, when the courts come to consider the validity of the enactment, is given equal force with the interpretation of a court of law. So that we have in this state a system which has interpreted this act just as this amendment enacts; that is to say, the appropriations which are forbidden are those which are made to any institution for sectarian or denominational uses. That is the interpretation, and why not say it? Why not say it? There is a misapprehension in every community, and yet every community has knowledge of the practical interpretations because every community sees before

its eyes every day in the year the expenditure of money to institutions which are under the management, it may be, of people who have different religious beliefs, but the purpose of the institutions is for the administration of the general charities of the commonwealth. So that I submit the language of the amendment should be adopted because it conforms to the interpretation of the section as it has stood since its adoption in 1873 or 1874.

Mr. GORDON. Mr. Chairman: If this amendment were adopted the clause might as well be left out of the constitution altogether. The purpose of this provision is that appropriations may be made to sectarian and denominational institutions of all kinds or of any kind, but that the appropriation shall not be used for a denominational or sectarian purpose. Who is to determine that? When is an appropriation used for a sectarian purpose, or when is it used for denominational purposes? There is a sense in which all ministrations are neutral, neuter as to religions, and there is nothing denominational or sectarian about them. This clause in the constitution had a very clear purpose, and that was to prevent appropriations to sectarian institutions, denominational institutions. Here is a provision which is to allow such appropriations to be freely made to denominational institutions, but there is to be a prohibition that the appropriation shall not be used for sectarian use or denominational use. Who is to determine that? I would like to know, not from this gentlemen, but I would like to know from the managers of these sectarian and denominational institutions what they would regard as denominational use or sectarian use. For instance, let us suppose them to be educational institutions, under denominational control; let us suppose them to be composed, for illustration, of educational institutions under the regulation and control of men like my own ancestors, all of whom were leading elders of the Presbyterian church, and they got an appropriation from the state. I do not believe you could convince any one of those men that any use to which they put that appropriation in an educational institution was for a sectarian or denominational use. But all education would have been in the atmosphere of that religious body, it would have been permeated with it, and all education would have gone along with that sauce or gravy spread over it, or that confection, if you choose, a denominational use. Why, Mr. Chairman, I cannot conceive. My learned friend, Judge Stevens, has the first time enlightened us in this shaft of darkness. I have not heard him before, but I would like him to give us an explanation of just what he would permit by this change. Do I correctly interpret him when I say it is intended to allow appropriation to denominational and sectarian institutions, and to confine the inhibition to a demoninational or sectarian use? That is to say, it shall not be used to teach religion? It shall not be used in the practice of religion, or a particular denomination of religion, but that any other use in that sectarian or denominational institution is proper? This is letting down the bars with a vengeance; it is not letting down the bars, it is burning them up.

Mr. STEVENS. Mr. Chairman: According to the remarks of the learned gentlemen, the Presbyterian Hospital of Philadelphia, under his statement, might be regarded as a sectarian institution; but surely under the law it would not be regarded as a sectarian institution. Its purpose is the administration to the sick and injured, and it seems to me that we are going very far when we endeavor to

mix up the purpose of charities which are administered with the creed of the people who administer the charity. There can be no creed in the surgeon's knife or any denomination in the surgeon's knife, whether it is wielded by a man of any or no religious belief. The sole purpose is not to open the doors to any one, but to confine the appropriation to institutions which use them for the public benefit, and the test is as to what is done by the institution, not what name the institution goes by. It seems to me my learned friend is allowing the traditions of his race to blind him and wants us to understand that all the narrowness which goes with creed should be applied to the charities of life. History tells us what the effect would be, because when we go to the fanaticism of religious belief we all know that in order to be freed from its shackles we must go through the fire, as all life as shown. So that it is not a question of creed or belief, but it is a question of what institutions do, and we should judge them solely by that. I would not open the doors to religious domination, but I would shut the doors to fanaticism, ignorance and prejudice, and open them to a wider humanity.

Mr. FISHER. Mr. Chairman: It seems to me, if I grasp the significance of the propsed amendment, it is to shift the prohibition from a class of institutions to the use to which the appropriation shall be put. The present inhibition is on denominational or sectarian institutions. Now, that gives you something definite and fixed. Judge Stevens well says there has been judicial expression and interpretation of that term, and we understand well what it is. The legislative body can easily discover and take advice as to the limitations of its powers. We know our field; but now we shift our gear and place the limitation not upon the object to which the appropriation is directed, but rather, upon the use to which the appropriation shall be put. There it seems to me we are on very uncertain footing. I agree with Judge Gordon. Who shall determine whether or not the use to which the appropriation is put is denominational or sectarian? As we stand today under our law, under our constitution, no appropriations can be made to certain educational institutions, like Lafayette College, for instance. I believe Lafayette College was a Presbyterian institution, if I recall history—

Mr. FOX. It is yet.

Mr. FISHER. I did not know whether it lived up to its profession or not. It is broad in its purposes, anybody can go there and be educated. The Baptists have a college at Lewisburg, the United Presbyterians have one out in one of the western counties, and Methodists have one up at Meadville. These are denominational colleges. Now, if this amendment is adopted the way is opened for the legislature to make appropriations to any of these institutions, coupled with the provision that they shall not be used for denominational or sectarian purposes. What do you mean by that? Who would be the judge of it? The legislature? It seems to me, while I dislike very much to question the propriety of the amendment suggested by Judge Stevens, we would be treading on dangerous ground if we adopted it.

On the question recurring,

Will the committee agree to the motion?

It was not agreed to.

The secretary read the amendment submitted in writing by Rev. C. H. Forney, of Harrisburg, Pa., as follows:

Amend by striking out all after and including the word "except" on line 3 and inserting the following clause: *nor shall any funds raised by taxation be used or appropriated, either directly or indirectly, nor shall any indebtedness be created, nor obligation issued, by the general assembly, or by any municipality of this commonwealth existing or created in accordance with article XIX, section 1, of this constitution for pensions or gratuities or as a life retirement for any purpose than for military service.*

This amendment was not called up.

The secretary read the amendment submitted in writing by John A. McSparran, Master, Pennsylvania State Grange, at public hearings April 21, 1920, as follows:

Strike out section in preliminary draft and retain section in present constitution, which reads as follows: :

No appropriations, except for pensions or gratuities for military services, shall be made for charitable, educational or benevolent purposes, to any person or community, nor to any denominational or sectarian institution, corporation or association.

This amendment was not called up.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE III, SECTION 19.

The committee of the whole proceeded to the consideration of section 19 of article III and suggested amendments.

The secretary read the section and amendment submitted by Kenneth L. M. Pray, Secretary, Public Charities Association of Pennsylvania, at public hearings April 13, 1920, as follows:

Section 19. Appropriations for the Support of Widows and Orphans of Soldiers.

1 The general assembly may make appropriations of money to institutions
2 wherein the widows of soldiers are supported or assisted, or the orphans of
3 soldiers are maintained and educated; but such appropriation shall be applied
4 exclusive to the support of such widows and orphans.

Omit from the constitution.

Mr. REED. Mr. Chairman: Is that a live question? Are there appropriations made to enough institutions of that sort to require a separate provision in the constitution? I ask for information.

The CHAIRMAN. My recollection is that there still are. I am not certain.

Mr. PINCHOT. Mr. Chairman: I understood from Mr. Pray that his object in desiring to omit this clause was simply that the matter was already covered in another form of words. In that case I assume it might well be referred to the committee on style.

The CHAIRMAN. The chair hears no motion to adopt the suggested amendment, and it will therefore be dropped.

The secretary read the amendment submitted in writing by the Legislative Reference Bureau, Harrisburg, Pa., as follows:

Amend by inserting on line 2 before the word "institutions" the words *classes of*.

Mr. REED. Mr. Chairman: In view of the budget system we have adopted is that section 19 really important? Would not the legislature have the power?

The CHAIRMAN. I should think so.

Mr. REED. Mr. Chairman: Then I would move the adoption of the amendment suggested by the Legislative Reference Bureau, the introduction of the words "classes of."

Mr. FISHER. Mr. Chairman: I second the motion.

On the question.

Will the committee agree to the motion?

Mr. PEPPER. Mr. Chairman: I have been a little slow in grasping this situation, but as I have it now it seems to me that the suggestion that Mr. Pray has made in connection with section 19 is a sound one. I am not able to see why appropriations of the sort that are referred to may not be made under the sections that we have discussed and debated.

The CHAIRMAN. You mean in the general budget system?

Mr. PEPPER. Mr. Chairman: Yes, it seems to me that is the case. Has the vote been taken?

The CHAIRMAN. No, you may call it up now.

Mr. PEPPER. Mr. Chairman: With your permission I will call up section 19 and move, as suggested by Mr. Pray, the ommission from the Constitution of that section as it at present stands.

Mr. THORPE. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. GORDON. Mr. Chairman: I want to suggest why I think probably this clause is necessary in the constitution. "The general assembly may make appropriations of money to institutions wherein the widows of soldiers are supported or assisted, or the orphans of soldiers are maintained and educated; but such appropriation shall be applied exclusively to the support of such widows and orphans." I do not think without that provision in the constitution that an appropriation could be made to a private institution where widows or orphans were supported or maintained, widows of soldiers were supported or assisted, or where the orphans of soldiers were maintained and educated. That does not come under the general authority of a two-thirds vote to make appropriations to charitable, educational or benevolent purposes to certain institutions, but this allows appropriations to be made to a private institution that maintains, supports and assists the widows of our soldiers and performs services therein named to the orphans of soldiers. They might be homes or might be a variety of kinds of institutions, but if the appropriation is exclusively devoted to those widows and orphans of soldiers then appropriation could be made to all other kinds of institutions of an educational, benevolent or charitable character, and could be made generally to institutions and extended for the general purposes of the charitable, educational or benevolent institutions; but this is in the form of widows and orphans of soldiers who are maintained in institutions—appropriations are made for that purpose, confining those appropriations to those widows and orphans. I do not believe without the provision that such appropriations could be made.

Mr. PEPPER. Mr. Chairman: May I ask Judge Gordon, through you, sir, whether there is not a good deal to be said in favor of the view that appropriations of the sort here contemplated come within the purview of section 17 as we have already adopted it? The language is on page 20, Judge Gordon. "Appropriations for charitable, educational or benevolent purposes may be made to a class or classes of institutions not under the absolute control of the commonwealth, but engaged in work or service deemed by the general assembly to be for the public good." Now it would be implied, I think, that an insti-

tution, charitable or benevolent in its character, which was engaged in the work of supporting or assisting the widows or orphans of soldiers, might be regarded by the general assembly as engaged in a work for the public good, and if that is the case—

Mr. GORDON. Mr. Chairman: It would be to an institution generally.

Mr. PEPPER. Mr. Chairman: It would be an appropriation to an institution generally under the provision of a budget system. Is not the amount of the appropriation available to any such institution equal to the repayment of the cost of the services rendered by the institution to the class of the beneficiaries that bring it within the provision? If there is any doubt about it we ought not to cut it out. It seems to be a wise provision. The only reason for my motion was I thought it was clearly within the provision of section 17. If it is not clear I withdraw my motion.

Mr. FISHER. Mr. Chairman: May I ask Mr. Pepper whether he has considered the effects of this provision in connection with section 17 of article III, the article that we had amended by striking out the words "educational or" in the first line, so that it was left to read "appropriations for charitable or benevolent purposes?" That would seem to leave out the education of the orphans of soldiers.

Mr. PEPPER. Mr. Chairman: I think we struck out the word "educational" on Dr. Thorpe's motion upon the understanding that an equivalent provision was to take its place elsewhere when we come to deal with the subject of education. I think it is clear from the fact that the other gentlemen do not see it as I do that this must be a doubtful question, and the doubt ought to be resolved by leaving in the Constitution what is there now; so I withdraw the motion.

The CHAIRMAN. There being no mover of the amendment, the ruling of the chair will stand and the amendment will not prevail.

On the question recurring,

Will the committee agree to the motion of Mr. Reed?

It was not agreed to.

Mr. McCORMICK. Mr. Chairman: May I ask for information whether these appropriations would be included in the governor's budget bill?

The CHAIRMAN. The chair, so long as he is the Attorney General, would advise the governor, if this should be the fundamental law, that they would have to be in the budget.

Mr. GORDON. Mr. Chairman: As the budget provides that all appropriations should be under the head of classes, should not that word be put in?

The CHAIRMAN. That would be a class by itself.

ARTICLE III, SECTION 22.

The committee of the whole proceeded to the consideration of section 22 of article III and suggested amendment.

The secretary read the section and amendment submitted in writing by H. K. Cienbeneck, Esq., of Pittsburgh, Pa., and also by the Civic Club of Allegheny county, Pittsburgh, Pa., as follows:

Section 22. Investment of Trust Funds.

1 No act of the general assembly shall authorize the investment of trust funds
2 by executors, administrators, guardians or other trustees in the *stock of any*
3 *private corporation nor in private corporate bonds not approved by some au-*

4 *thority empowered by the legislature to pass upon issues of bonds* [*bonds or stock*
5 *of any private corporation, and*]. Such acts now existing are avoided saving in-
6 vestments heretofore made.

Retain as in present constitution.

Mr. REED. Mr. Chairman: I do not want to move for the suggestion as made, but I want to call attention that this mysterious printer has balled this thing again; he has in there the words "bonds or stocks of any private corporation, and" in brackets and that has been printed in the tentative draft. I do not know what it means, and it ought to be stricken out. It evidently got in through error.

The CHAIRMAN. As I understand, Mr. Siebenecks' proposition is to strike out the wording of the tentative draft and retain the wording of the present constitution.

Mr. REED. Mr. Chairman: I am not moving that, I am trying to get this present section straightened out.

Mr. CARSON. Where is it written, Judge Reed?

The CHAIRMAN. The words "bonds and stocks" are in the original constitution. The secretary calls attention to that.

Mr. REED. Mr. Chairman: It was not the printer, that was the secretary.

Mr. GORDON. Mr. Chairman: I move the adoption of that amendment, sir. I understand that amendment would be to retain the constitution as it is at present, the prohibition against such investment.

The CHAIRMAN. Yes, sir.

Mr. GORDON. Mr. Chairman: I move that.

Mr. McCORMICK. Mr. Chairman: I second the motion.

On the question.

Will the committee agree to the motion?

Mr. Reed. Mr. Chairman: The gentlemen will remember that this came up in the early part of our deliberations and it was then suggested—Mr. McCormick I do not think was here, Judge Gordon was, but he may not remember it—it was then suggested that there was a great deal of difficulty on the part of trust companies and trustees in making investments in what were under the constitution legal investments, which were confined to mortgages, municipal and United States bonds, and there was quite a demand or request that that provision should be broadened. As it is today, trustees and trust companies are taking responsibility that they ought not to be called on to take in order to obtain a living rate of income for their beneficiaries. The first proposition from the committee, as I remember it, was to permit them to invest in bonds and stocks, and the commission struck out the word "stocks" and worded the provision as it is, bonds of corporations.

The CHAIRMAN. Approved by some competent authority.

Mr. REED. Approved by some competent authority. So that there is, I think, a real necessity for this provision.

Mr. GORDON. Mr. Chairman: I remember very well that this was discussed at the time and advocated by Judge Reed, and I think by Mr. Pepper and possibly by myself, and probobly somebody else, but I then believed and I now believe that this change is an unwise one. I do not hope by any argument made by myself to alter the conclusion arrived at by Judge Reed, but I have observed that this amendment to retain the present constitution was made by H. K. Siebeneck, of Pittsburgh, and I thought there might be a little local

coloring to it made by him that might apply to Judge Reed. Mr. Chairman, the last words that fell from Judge Reed's lips were that the trust companies were in need of relief so that they might invest in other securities than those that they are now limited to so that they could get a higher rate of interest. If there ever was a time in the history of this country when something should be done that might legitimately be done to make the bonds of the government of the United States and the states of the union and the political subdivisions of the state attractive or possibly compulsory investment, it is now. I do not know that anything could be done to stabilize the market in liberty bonds, but I know one thing that could be done to depress the market in liberty bonds, and that is to give trust companies the wider opportunity to enable them to put their trust funds in bonds of private corporations which pay a larger rate of interest. Even though those bonds were approved by legislative committee subjected to the usual arguments and persuasions which corporations adopted when they appear before legislative bodies, I do not think the inducement of a higher rate of interest should ever be held before trustees. I think that they ought to be, least of all in this day, given a wider opportunity of selecting the bonds in which they could put trust funds, and I believe that it would make for a stability in the existing state and federal issues of bonds if this amendment is passed as it exists today. I therefore favor the amendment of Mr. Siebeneck, of Allegheny.

Mr. REED. If you had charge of a trust estate of fifteen or twenty thousand dollars and some widow was trying to live on it and you could only get four per cent. or three and one-half per cent. on the income, what would you do?

Mr. GORDON. What could I do?

Mr. CARSON. Marry the widow.

Mr. REED. Mr. Chairman: A trust company cannot marry the widow.

Mr. McCORMICK. Mr. Chairman: Put it in Liberty bonds.

Mr. REED. Mr. Chairman: I will come to that. I would try to get the trustee to take a little chance and get five per cent. Now, Mr. McCormick said put it in government bonds and get six per cent. The curious thing about these first-class securities is that they have gone down quite as much as the bonds of corporations. Of course, there are exceptions. I do not mean that some corporation bonds have not gone down more than others. The average individual who had invested as Mr. McCormick suggests, his widow's money in liberty bonds at one hundred would have been taking a chance of winning the war and getting a safe investment and would have found his investment today with his twenty thousand dollars worth about seventeen thousand and still getting his eight hundred dollars. I would like to ask Senator Fisher, who has had large experience on this subject, what his view is as to the wisdom of this provision. He is the Banking Commissioner and knows more about it than I do.

Mr. FISHER. Mr. Chairman: Judge Reed attributes to me experience I hardly possess.

Mr. REED. Mr. Chairman: He gets paid for it, he ought to know.

Mr. FISHER. Mr. Chairman: I personally feel very conservative on this subject. I do not know whether I feel as progressive on all subjects as my friend, Mr. Pinchot, but on this one I could not be

called a radical. I think the first duty of a trustee, of course, is to safeguard the corpus of the estate. The constitution has sought to do that by putting great restrictions upon the investment of trust funds. Our experience has been as business has developed, as the character of investments has changed, that the restriction has been so great that in many cases it has been difficult to find suitable investments for trusts funds. When our present constitution was adopted the amount of trust funds invested was comparatively small. To-day estates constitute in many instances the means of support for the dependents which is provided through the creation of trusts. A few years ago, we can all recall, the trustees were ordinarily individuals, but our trust companies have grown up in the last few years and they supply that need. Now, it is no uncommon thing for a trustee to be obliged to provide for the investment of a million or more of dollars. Anyone familiar with the handling of finances in a large way knows of the difficulties the trustee faces, in the opportunity of making that investment and making it safely, and at the same time getting a rate of income which a trustee is supposed to get for the estate. If he invests it at a rate lower than the legal rate of interest, he may be surcharged in his account, because he did not get the best possible yield; yet he may be confronted with the fact that under the limitations placed on investments in such estates it is impossible for him to make proper investments. It is true just now there is ample opportunity for investing trust funds in government bonds, the choicest investment we can conceive of, and yet we have all seen government bonds drop ten to twelve points in the last few months. That is a serious thing, because if he were called upon to account for his trust, and he had invested without authority of law, he might be surcharged for the losses. There are a great many difficulties here. It seems to me we ought to be conservative in throwing all the safeguards we can around the investment of these trust funds, but at the same time we ought to remove the restrictions sufficiently so that the trustee may be able to handle the trust funds under present conditions and not under the conditions as they prevailed in 1873. Many of the states have met this by broadening the investments for trustees and for savings banks. They allow many kinds of securities to be used in that way by the enactment, in some cases by approval of certain boards, and in other cases by the approval of court. The special committee, as we all recall, reported favorably on allowing investments to be made in stocks and bonds. I believe it was I who raised objection to the stock feature of the provision and suggested it be limited to the bonds, and that those bonds be subjected to the test of approval by law or some agency established by law. At that time I called your attention to the possibility of there being created in this state a board under what is known as the "blue sky law" which passes upon the validity and the good faith of the issuance of such securities. If we had such instrumentality in this state it would be an easy thing for the legislature to empower it to say what ones of those securities might be legal investments for trust estates or savings banks, if you please.

Of course, we can only meet these things in a general way. We are always met by sudden changes in conditions in valuation, fluctuations in the money markets, and changes in forms of property. When this constitution was adopted the safest sort of investment was con-

sidered real estate mortgages, and yet we know, those of us who have to deal with the investment of securities by our banks, that we have to watch mortgage investments more closely than any other kind, because in great cities we see new sections springing up producing great values and other portions with the population swept away, resulting in great depreciation in the value of property. I think it has been true perhaps in Philadelphia. I know, Judge Reed, it is true in Pittsburgh. I can recall very well when Allegheny was the choice residential district of what is now the city of Pittsburgh. That has shifted from there to another section so that there has been a great recession in the value of real estate. You cannot have an absolutely safe standard. The only thing you can do, it seems to me, is to broaden the field for investment to a reasonable extent and then safeguard it with whatever provisions we may, and I feel that the amendment proposed in the tentative draft is conservative and would accomplish what seems to be necessary under modern conditions.

Mr. GORDON. Mr. Chairman: I should like to make one final appeal on the subject. The argument of Judge Reed and the argument of Senator Fisher is that this is needed in the aid of trust estates to broaden the field for the investment of the funds of trust estates. Let trust estates be the subject of my story then; trust estates. When this constitution was adopted United States bonds, I suppose, would not have realized, if bought on the market for trust estates, much more than three per cent. at that time; certainly three and one-half per cent. would have been the maximum. Ten years later three per cent. would have been the maximum. By and by I think they came down to a point where two and one-half per cent. would have been as much as United States bonds would have realized for a trust estate—two per cent., Judge Reed says, sold at a premium. The reason was mainly because the government was rapidly redeeming its bonded indebtedness, and because the bonds could be used by the banks for the issue of circulating medium, and thus the great financial institutions became bidders for these bonds. They became scarce, therefore, in number, and the desirability of these bonds as circulating medium became such that banks bid for them and obtained them even when they could get only two per cent. and then possibly the trustees of estates in an emergency could not get a wide enough field for investment. But today the United States bonds amount to, I could not say how many, twenty or twenty-six million, the liberty bonds and the victory bonds, which are not the subject and cannot be made the subject of circulating medium by the banks—I think that is true to all of them—and, therefore, the banks not being bidders and the trust companies not being bidders, the United States bonds to the extent of twenty million stand on the market so that they could be bought at a return of five per cent. I am told, and more; that is to say, if the reduction in the principal paid for them is counted in finally in the interest, and at the current interest on the investment, five per cent. and at their current face value running from three and one-half per cent. up to four and three-quarters per cent. Now, do trust estates stand in need of help to-day? Is not their field ample, and the best creditor in the world four and one-half to five per cent. government bonds? Is not the United States the best creditor of the trust estate? Can they do better, and ought the bars to be let down, and should the trustees be allowed to take the bonds of private en-

terprises, with their peril possible, because six per cent. could be realized? I think not, and I believe it would be a patriotic duty of this state not to pass this amendment and allow the trustees to buy the bonds of private enterprises when the market for the United State bonds stands as it is, and when for decades to come probably there will be ample United States bonds to supply all the trust estates that need investments.

Mr. McCORMICK. Mr. Chairman: I am in sympathy with the problem as suggested by Judge Reed and Senator Fisher, but the reason I seconded this motion and propose to vote for it is because that I believe at this time passing through a natural chaotic conditions, due to a great world castastrophy, it is the wrong time to amend the constitution in this direction, and those conditions do exist today, as you have suggested. It looks to me like one of the costs of war, an artificial period, and therefore it might be wiser for us at this time to leave the constitution remain as it is, because I believe that at some time conditions will be normal and that the old constitutional provisions more surely fit normal conditions than artificial conditions that now exist.

On the question recurring,

Will the committee agree to the motion?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE III, SECTION 22-A. (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 22-A of article III.

The secretary read the proposed new section suggested in writing by Cortez H. Jennings, of Towanda, Pa., as follows:

Section 22-A (New).

The general assembly shall provide by law against the pollution of all streams the liquids coming from tanneries and discharged into streams.

Or, as an alternative, the following:

The general assembly shall provide by law against the pollution of all streams and rivers.

This amendment was not called up.

ARTICLE III, SECTION 22-B. (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 22-B of article III.

The secretary read the proposed new section submitted in writing by George M. Woodruff, Esq., representing the Pennsylvania State Grange, as follows:

Section 22-B (New).

The general assembly shall, by general laws, provide for maintaining the purity of streams in this commonwealth, so that the waters shall not be polluted by placing or allowing to enter therein any substance or thing in quantities sufficient to destroy the life or harm the health of persons or animals drinking therefrom, destroy fish life or fish food, make the waters noxious, or interfere materially by sediment with the flow or status of the waters.

Mr. CARSON. Mr. Chairman: That is pratically the same thing as the preceding one.

The CHAIRMAN. The verbiage is different.

Mr. PINCHOT. Mr. Chairman: I move the adoption of the section.

Mr. VOLL. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

The CHAIRMAN. Just for information I would like to call the attention of the commission to the fact that all the powers, it seems to me, provided for in this section are now exerciseable by the state under the police power. I tried a case for the state department of health under the law which gives the state department of health absolute control over all sources of water supply, at least for drinking purposes, and it seems to me a much wider jurisdiction than any constitutional enactment such as this could give it; and whether by this provision we are not narrowing the powers of the state health department rather than widening them, I think is a question worthy of consideration.

Mr. PINCHOT. Mr. Chairman. In the case you tried were there other departments besides the Department of Health?

The CHAIRMAN. I think the broad proposition is laid down by the supreme court that the agencies of the state can prevent the pollution of the streams at the headwaters and all other streams where the question of the public health is concerned.

Mr. PINCHOT. Mr. Chairman. Is that Judge Anderson's decision?

The CHAIRMAN. No; it was in the drainage case where they put a sewer plant at the headwaters of some of the creeks in Chester county; but the powers that are there given to the state, it seems to me, are very ample powers. My only question is whether this would not possibly limit the power because under the police power of the state, it seems to me, the powers of all the departments of the state government are plenary now where the public health and the use of water for potable purposes enter into the question.

Mr. PINCHOT. Mr. Chairman: There are so many other questions besides the public health that enter into this matter that I want to raise the question whether that ought not to provide for this purpose also. The public health is only one of the large number of reasons.

The CHAIRMAN. The fish proposition, of course; I think the fish commissioner has very broad powers under the fish act.

Mr. PINCHOT. Mr. Chairman: The Fish Commission has broad powers but never exercises them for reasons which it is not necessary to enter into here now. He has often expressed his intention not to exercise them, and because stream pollution is dangerous and extends so far beyond the matter of fish to the matter of public health, it seems to me, the whole question is at least worthy of consideration. Of course, I am sorry to bring before the Commission this afternoon anything that would call to mind that fact, yet that is worthy bringing up. The fish interests of the state are very important, far more important than merely for recreation. Other important questions are the industrial interests, which depend on this water supply. It is probable that by far the larger part of the people of the state living out within the water-sheds which are very seriously polluted and that it is of economical importance. The commercial use of water, polluted water, is now leading to enormous losses. It is difficult to

realize how far this thing has gone unless looked into. There are not merely hundreds but thousands of miles of streams of the state which are now polluted and many thousands of square miles of water-shed in which the water is practically all of it in the running streams defiled one way or the other. That comes closer to the commercial interests of the state, not merely in the matter of coal pollution, but in many other questions. For instance, the Pennsylvania railroad in the western part of the state has been bringing suits to compel certain kinds of refuse to be kept out of the streams because the pollution makes it extremely difficult for them to run their locomotives. The Cambria Steel Company, for example, uses on an average one hundred million gallons of water a day. The Pennsylvania Railroad Company at Altoona and Pittsburgh on the main line uses some sixteen or nineteen million gallons of water every day, and there are various other uses in which the pollution of water becomes a very serious economic drain on the people of the state; and in addition to that the people of the state have as one of their absolutely fundamental rights the right of pure water. Pollution is going on not merely from the coal mines, but according to Mr. McCaleb coal-mine drainage absolutely leads in the end to the destruction of the water supply. It is coming from steel mills, from tanneries, by which steel-mill pollution, steel-mill acid pollution, has gone so far in one case at least, in the Monongahela river, the United States army engineers proposed a bill in Congress to prevent the pouring of acid in the Monongahela river, on the ground that it would interfere with navigation by eating away the steel hulls of vessels. Tannery pollution is dangerous, causing anthrax, as well as pickling liquor, which, by combination of chemicals, turns water into ink. The pickling liquor from the steel mills, the water that quenches coke, and so on, the acid out-pours from paper factories and filthy discharges from thousands of reasons for the pollution going on now all over this state in full swing. What little observation I have been able to make throughout the state leads me to believe that one of the largest benefits that could be offered to the people of the state would be to stop the needless pollution that is going on. I happen to have had some experience in the matter of compelling people who were polluting the air or waters to stop, with the result that they made more money out of their business after they stoped than they did before. There are in the western part of Pennsylvania a considerable number of coal companies who add a profit through taking out of the waste matter of their mines the substances which are destructive in the streams, but which when properly handled become sources of revenue to the companies. No one has any intention of ruthlessly breaking down the economic system of the state, but as the natural and industrial processes increase the fact that all these evils can be set aside without interference with business becomes more and more plain, and for that reason I have a very strong desire that some such clause as this suggested by Judge Woodruff may be incorporated in the constitution whereby active steps may be taken to clear up the situation in Pennsylvania and in the streams of Pennsylvania.

Mr. CARSON. Mr. Chairman: May I ask Mr. Pinchot why in the views which he has stated he passed over in silence the suggestion

made by Mr. Jennings of Towanda? Do not they run in the same line, and do they not support the same purposes?

Mr. PINCHOT. Mr. Chairman: Yes; but it seems to me the other clause is more apt to the purpose I had in mind. The one provides against pollution, and the other postively demands purity. That is one reason I like the second one better.

Mr. CARSON. I agree with the Attorneey General that the police powers of the state are at the present time adequate if exercised, but if they are asleep and the people absolutely indifferent to their use, you want some sort of a lash to secure compuslory action on the part of the legislature to protect these industries. I cannot see that that would do any harm. I would rather be in favor of it, I think.

The CHAIRMAN. I do not want to be understood as being opposed to the particular proposition as stated to clear out the streams of the state. My suggestion is that this narrows and does not widen the power, and it seems to me that it would be construed finally that naming the particular thing would exclude the larger view which Mr. Pinchot has, because this would limit pollution to the pollution that would destroy all the life of streams, the life of persons or animals drinking therefrom, destroy fish life and fish food, and status of the water. Next, I do not think that would. I submit this for the thought of the commission—cover a great many things which Mr. Pinchot has in mind and that ought to be covered and are covered, as I measure the law, under the police power of the state. If water poisions, actually poisions the people, there is an adequate remedy at law now, and an adequate remedy in equity; and if the effect is to destroy fish life I think there is an adequate remedy. Take for instance in the Delaware river, it would be shutting up immense industries that have not made any provision to take care of the refuse; but if the effect of this is to deny the powers of the state, it seems to me it ought not to be passed; if on the contrary it is to widen the powers, all right.

Mr. PEPPER. Mr. Chairman: I was merely going to suggest that this section, as I interpret it, is not an attempt to grant power to the general assembly. If it were I should be opposed to it because the expression of the powers granted might be interpreted as an exclusion of the powers not specified, and this is a very much narrower specification than the whole field of the police power; but I take it, sir, the function of this section is not to grant power but to impose a duty.

The CHAIRMAN. In the particular respects named.

Mr. PEPPER. Mr. Chairman: In the particular respects named. It seems to me, sir, that this section makes it the duty of the general assembly to take action in the respects named. In taking that action it uses only a little of the undoubted police power to which the chair has referred. I take it that to impose the duty on the legislature to use portions of the police power in a particular case in no way rises the implication that the existence of the police power in its general scope is impaired or diminished. So it seems to me in line with what Mr. Carson said that we may with propriety, if the commission shares the views of those who believe in this section, place upon the legislature the duty of acting in a very great and important particular.

Mr. CARSON. Mr. Chairman: That is the way it strikes me. I do not see that it impairs the police power; it is entirely independent of that. That is clear. It calls the attention of the legis-

lature to the crying need for executive action, so that if the act is properly drawn a writ of mandamus at the instance of the attorney general may issue.

Mr. KELLY. Mr. Chairman: I think if this should be written into the Constitution it would certainly have the effect of closing up all the anthracite mines of Pennsylvania, because the water which is discharged from the anthracite mines workings will destroy fish, has destroyed fish in the streams near the anthracite region I can remember when there were fish in the Lackawanna river and when it was a most delightful stream; but I am sorry to say that now it is a most disgusting stream, and we regret very much that what was once a beautiful flowing stream of water, where the fish were swimming, and were caught from time to time, and where bathing was indulged in, and where we in our childhood rode the colts down to the river to water in the evening and morning, is to be avoided as though it was a pestilence, and I do not think I ought to let the matter go by without sounding a warning. I am not going to take issue with Mr. Pinchot, who knows so much more about the subject than I do. If it is so, and if it can be done, that the mining companies could extract from the water, before discharging it into the Lackawanna river and other streams, the injurious substances, then perhaps on the whole it would be the proper thing to do. I am not going to take issue with that. I am ignorant on that subject, but I am fearful of it. The amount of mine water discharged into the stream is tremendous. You can get some idea of it from the fact that from six, I might say twelve per cent. of the coal that is mined is used up for the purpose of generating steam to operate the pumps in order to get the mine water out of the mines. The mine workings in some instances run many hundreds of feet below the surface of the ground. There are all kinds of percolating waters and subterranean streams and fissures through which subterranean waters flow in, at least to me, mysterious ways, and especially in some of the older workings where the veins are very deep, hundreds of feet below the surface. It is a tremendous task, and there is a tremendous amount of coal, which, of course, means money, in order to get the water from the mines, and in order to enable the operations to be carried on. Now, not being familiar with the method, and not knowing about the practicability of extracting these harmful substances from the water before they are discharged into the streams, I do not feel as though it would be safe to have a provision of this kind written into the constitution. If the members of the commission are all satisfied that that could be done as a practical proposition, which Mr. Pinchot seems to intimate it could be done, it will be perhaps all right, but unless we are absolutely sure of that, Mr. Pinchot, the whole anthracite mine fields of Pennsylvania would have to vote against a constitution that contained any such provision as this.

Mr. REED. Mr Chairman: At five o'clock in the afternoon we are gayly sauntering into a proposition that involves billions of dollars and which may upset the whole mining industry of the state and the manufacturing industries, and we are going to dispose of it in about fifteen minutes consideration. The police power of the state is ample. The legislature has all the powers necessary to pass legislation under which your department can enforce the proper protection of the streams. It has been done in the past, and why should we undertake to put a fast and loose provision into this constitution

that may destroy, as I say, a billion dollars worth of property in order that Mr. Pinchot's benevolent ideas towards fish may be encouraged? It is a serious matter and it is a matter conceded all around here that the legislature has all the powers necessary. It is too serious a matter, it seems to me, for us to make a declaration of this sort at this time.

Mr. FISHER. Mr. Chairman: I feel that I ought to make an expression on this question, because it involves the very life of the bituminous coal industry. Judge Kelly has referred to the effect of it in the anthracite coal region. The case to which Mr. Pinchot referred orignated in the anthracite region, the case of Sanderson. In that case some of the waters were pumped from one of these mines into a stream and flowed down and destroyed fish life. The owner of the property asserted her rights in the courts, the case was bitterly contested, carried to the supreme court three times, and finally an opinion rendered by Justice Silas Clark, which has since been the law in this state and has been the standard for the operation of mines generally in this country. We are all in sympathy with Mr. Pinchot's ideas about the preservation of the purity of the streams. I do not believe there is anybody who does not give serious consideration to that question. I have no doubt that we are late in entering the field in protecting the purity of the streams. If we had had foresight and understood these problems half a century ago we might have applied remedies that would have in a large measure kept our streams pure and clean and beautiful, but I cannot conceive of anything that we could have done to protect the waters from the natural flow of the mines. In the anthracite regions one of the most injurious elements that enters into the drainage of mines is the fine coal that drifts down with the water. You go along the river front here any day and you will see a fleet of barges out there engaged in lifting this drift coal from the bottom of the river, and it becomes a valuable asset, and the people of Harrisburg depend upon it to a large extent for their fuel supply. But up with us that does not occur. We get the natural drainage of the mines and most of our mine drainage comes as surface flow from the mines, not below the surface. As the drainage naturally flows out, it is charged with certain acids that enter into the streams, and it is deadly to fish and other kinds of aqueous life. However, it is not dangerous to human life. The fact of the matter is that it kills what we call the germs that have been cast into the water and renders it safe for drinking purposes, so that from our streams up there many of our communities are supplied with this same water for domestic uses. I cannot conceive how you can stop that mine drainage and save the bituminious coal industry. There may be some plan. I know that engineers of the highest skill have been thinking of that problem for many years and no practical solution has yet been found. Now, if this provision were to be put into the Constitution the very fact that the drainage from a mine killed the fish would mean that the legislature would have the power to say that that mine should cease to operate.

Mr. REED. Mr. Chairman: Must say it.

Mr. FISHER. Mr. Chairman: Must say it; it is mandatory. Now, while we all like to go fishing two or three times a year, and while we admire the beauty and the purity of the stream we must make

a selection between the life of the industry upon which depends the economic life of the nation and the life of these aqueous animals. You know this is the age of coal, this is the age of steam and electric power. All those things have their being in the strata of coal that we take from the earth. If you stop the production of coal you stop these sources of power and you shut down the great engines of industry through which we carry on the business of to-day. It seems to me that unless you are prepared to deal a deadly blow to the coal industry of the state, both anthracite and bituminous, you should hesitate to insert a provision of this kind in the constitution.

Mr. REED. Mr. Chairman: I want just to say that Senator Fisher's remarks seem to me incredulous, for he said that this water was not only safe but good to drink. The Monongahela river is filled with acid, both from the coal mines and from the mills, and as a fact no fish could live in it fifteen minutes. The people of the South Side were supplied with water from that stream, pumped up into a reservoir in the south hills, and during our typhoid fever epidemic in Pittsburgh there was pratically no typhoid fever on that side of the river, while in the East End and the so-called better portions of the city, where the drinking water was taken from the Allegheny river, supposed to be much better and where there were fish, the typhoid fever was epidemic. We have cured that by filtration.

The CHAIRMAN. And you now use it as a substitute for rye? It is poor, but a substitute.

Mr. REED. Mr. Chairman: Well, the curious thing about it was, I was going to say, that the water in the Monongahela river would eat out the boiler of a locomotive in about a month, but it really did the human boiler good.

Mr. McCORMICK. Mr. Chairman: There are two phases to this question, and while I recognize the serious situation that would arise if this drastic action was taken without notice, there is a great deal for us to consider in the amendment as proposed by Mr. Pinchot. The state has told all the cities of the state that we have to filter our sewage. It is going to cost the cities millions of dollars. They have been very reasonable in the enforcement of that regulation, but it is before us, we can no longer put our sewage into our public streams. I was interested in mining ore in Tennessee twenty-five years ago, and we used to dump our washings into the streams and would go down along the bank and settle with the farmers who were going to sue us for twenty or twenty-five dollars. It became such a nuisance that they began to sue under the state law, I think it was. What we do now is to take care of our disposal, we have settling beds. It costs us a little more and it it a little more trouble, but we do not put our washings into the streams, and I think there is something in this that we ought to consider and see whether a plan can be worked out whereby at some future day some such a law may become effective and be compulsory, so that these great industries will have an opportunity to protect themselves, which they should have, and I agree with Mr. Pinchot. At the same time I am considerably interested in coal myself in the bituminous fields, and hope that something will be worked out whereby this water may be disposed of and to the advantage of the mine operators. When you think that there are corporations, manufacturers, private and corporate, that have to go into their pockets to the extent of millions

of dollars to go away from the natural water in front of their doors and go off, as the Pennsylvania Railroad had to do, and spend millions of dollars for a water supply, and I have been in my own experience, as I know Senator Fisher has, where, to wash their coke, they had water right in front of their coke ovens and had to build a pipe line miles off into the mountains at great expense to get water to wash their coke, when they had a stream in front of their ovens but could not use it. So that there are, I think, two sides to this question, and I think some action that could be taken which should require that within a reasonable time the pollution of streams should cease, just as the state is demanding that the pollution of the streams for the health of the citizens should cease. I think a stream should be free for the use of every man who proposes to use it along that stream.

Mr. PEPPER. Mr. Chairman: It seems to me that, as Mr. McCormick has said, we are in danger of allowing ourselves to be moved by the difficulties of dealing with this serious situation and to turn our backs on all efforts to relieve it. It occurs to me that the difficulty with the section that we have under consideration is that after a sound statement of general public duty which ought to rest on the legislature we proceed to specify the way in which the duty is to be performed in such terms as to make it mandatory upon the legislature to do the industrially impossible. I suggest that the way to accomplish what Mr. Pinchot has in mind, which is to call public attention to a great need and lay upon the legislature the duty of dealing with it in some feasible and intelligent way, is to make the declaration as contained in the opening clause and omit by amendment all the rest of the section. To bring that matter before the commission I move you, sir, to amend the section under consideration by omitting all after the word "commonwealth" in the second line so that the section as amended would read "The general assembly shall, by general laws, provide for maintaining the purity of streams in this commonwealth."

It seems to me, sir, that that is a declaration which ought to be made, we ought to call attention to this great need at this time, we ought to lay upon the general assembly the duty of dealing with it, and such a declaration of duty as that will be interpreted by the general assembly as a duty which ought to be performed reasonably and with reference to the economic and industrial interests of the commonwealth. I offer that as an amendment.

Mr. PINCHOT. Mr. Chairman: I accept that amendment.

Mr. FOX. Mr. Chairman: I would like to ask a question of Mr. Pepper, if I may, and that is whether there is not already legislation practically to cover this subject? I know that in our part of the country the state officials are constantly requiring the people to stop the pollution of streams.

The CHAIRMAN. I have a case in mind now where they are endeavoring to get a large mine to divert mine drainage from the headwaters of the stream, and I think we are eventually going to get them to do it. That will clear up that stream, probably twenty miles of water.

Mr. PINCHOT. Mr. Chairman: Judge Fox asks whether or not there is not already legislation to cover this subject. The state has been very active in preventing pollution by sewers, but the line seems to be drawn between commercial pollution of streams and sewage

pollution of streams. I would like to get on the same side of the question with my friend, Judge Reed, just once if I can by saying I recognize at once in the western part of the state mine water does not kill the typhoid bacilli. No one advocates this amendment with the idea of closing down the mines of the state, or to deal any deadly blow to any of the great industries of the state, but we do want to move in the direction of purity. We recognize that there are streams polluted to such an extent that it will take years, even if no more pollution is poured into them, to clean them up. I have seen many cases, when I was forester and at other times, where an effort to secure reform of this kind has been followed by profitable experience of the parties.

Mr. FOX. Mr. Chairman: I would like to say in reply to Mr. Pinchot that I think he is mistaken as to its being confined only to sewage. I have knowledge myself of two instances where industries were fined because they had actually polluted the streams; one was the Bethlehem Steel Company, and the other was a silk manufacturer.

Mr. PEPPER. Mr. Chairman: There are laws on this subject, but it seems to me, sir, that there is no complete legislative scheme for dealing with the whole subject of the purity of the streams of this commonwealth. There are particular acts which make it criminal to do this, that and the other. They are rather narrowly drawn and your case has to be one brought clearly within the narrow provisions of the act in order that you may get a conviction. The proposal is to draw the attention of the public to the whole subject of the importance of purifying the streams and maintaining them in their purity, and to make it incumbent upon the legislature to deal in a large way with the whole subject of the conservation of the water resources of the commonwealth. It seems to me we ought to have that system of legislation, and I think we ought to make it the duty of the legislature to see that we have it.

Mr. FISHER. Mr. Chairman: I would call attention to the water supply commission, which has the broadest powers over the waters of the state, both as to the question of pollution and obstruction, and the water supply commission is constantly on the job watching and protecting streams. If you want to obstruct a stream by building a bridge or putting up a dam you must go to the water supply commission to get permission; and the health department has plenary powers on this subject, and has been extremely diligent. The trouble is that the pollution has gone so far, the task is so enormous, that these agencies of the government cannot do their work excepting through a long and patient process. They have gone into the western part of the state and built disposal plants or forced the building of disposal plants, have gone to manufacturing industries and compelled them to take care of pollution from their plants. I know in the lumber regions they will not permit the manufacturers of lumber to allow drainage from the sawdust and waste to get into the streams. They have done innumerable things of that kind. So that I must disagree for once with the gentlemen from Philadelphia as to the comprehensiveness of the legislation now on the books. The trouble is that the task has been too big to accomplish as economically as we might desire. The fact is, I think, the state as we stand at present has full and adequate power to regulate pollution of streams from

all sources of an artificial nature. The mine-owner is protected because the drainage from his mines is natural drainage, and he is the only person who is protected. The legislature can govern steel mills, and all sorts of industry that pollute the streams by artificial process, and I believe that if the amendment prevails we would find ourselves in the same situation that we now are without the amended amendment.

Do I understand that the vote is on the amendment to the amendment?

The CHAIRMAN. Mr. Pinchot has accepted the amendment and the vote is now on the declaration that the general assembly shall by general law provide for maintaining the purity of the streams in the commonwealth.

On the question recurring,

Will the committee agree to the amendment?

It was agreed to.

Mr. CARSON. Mr. Chairman: I should like to explain my vote. My views have been changed by debate. I do not think it is necessary to adopt this; I think the police power is adequate, and I can see some danger in what Judge Kelly and Senator Fisher have said in regard to the other industries of the state, and for that reason I voted against it.

ARTICLE III, SECTION 25.

The committee of the whole proceeded to the consideration of section 25 of article III and suggested amendments.

The secretary read the section and amendment suggested in writing by Hon. Alexander Simpson, Jr., of Philadelphia, as follows:

Section 25. Legislation During Special Session.

1 When the general assembly shall be convened in special session, there shall
2 be no legislation upon subjects other than those designated in the proclamation
3 of the governor calling such session.

Amend by adding at the end thereof the words: *and those designated by the governor, after such session has convened, as being subjects of great and immediate public importance.*

Mr. REED. Mr. Chairman: I move the adoption of the amendment.

Mr. ENGLISH. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. CARSON. Mr. Chairman: I rather prefer the language submitted by the Chair. With all due deference to the justice of the supreme court, I think that is clearer. I know we had this matter up at the time I was attorney general and we added something which was important after the special sessiaan had been called. I think the language submitted by you is better than the first.

Mr. REED. Mr. Chairman: I will withdraw the other motion and move that.

Mr. FISHER. Mr. Chairman: It seems to me that this amendment ought not to prevail. You will recall, General Carson particularly will recall, the last time we had a special session the proclamation issued by the governor specified certain subjects of legislation. Subsequent to the call some of us solicited the governor to amend his call by making certain additions thereto, but that amendment was made before the legislature assembled.

Mr. CARSON. Mr. Chairman: That is true; yes, sir.

The CHAIRMAN. This changes the status of the present constitutional provision by allowing the governor after the legislature has assembled to amend his call, so that once in session the governor can keep on sending down subjects of legislation just as long as he wants to. It seems to me that that is a dangerous provision and one that we do not want to insert in our draft.

On the question recurring.

Will the committee agree to the motion?

It was not agreed to.

The secretary read the amendment submitted by the chair, as follows:

Amend by adding at the end thereof the words: *or submitted by the governor to the general assembly as being, in his judgment, of such importance as to call for immediate consideration.*

The CHAIRMAN. The chair withdraws the amendment submitted by him for the reason that I take it for granted that the vote on the other is the controlling vote on this.

ARTICLE III, SECTION 27.

The committee of the whole proceeded to the consideration of section 27 of article III and suggested amendment.

The secretary read the section and amendment submitted by John A. McSparran, Master, Pennsylvania State Grange, at public hearings, April 21, 1920, as follows:

Section 27. State Inspection of Merchandise Prohibited.

Retain section as in present constitution, which reads as follows:

No state office shall be continued or created for the inspection or measuring of any merchandise, manufacture or commodity, but any county or municipality may appoint such officers when authorized by law.

Mr. GORDON. Mr. Chairman: I move the adoption of the amendment.

Mr. McCORMICK. Mr. Chairman: I second the motion.

On the question.

Will the committee agree to the motion?

Mr. GORDON. Mr. Chairman: I never knew why the provision was stricken out of the constitution.

The CHAIRMAN. Because there was a very grave question as to the constitutionality of cetrain acts of assembly and that certain powers ought to be exercised by the state as to the inspection of foods and various other things of that kind. It provides now for the creation of a state office for the inspection of merchandise, manufacturers of commodities, but now the state has agencies that are continuously doing that.

Mr. GORDON. Mr. Chairman: I do not know what the abuse was that was intended to be provided against by the original provision.

The CHAIRMAN. I think it was the sealer of weights and measures.

Mr. GORDON. Mr. Chairman: The sealers of weights and measures who were appointed by the governor, or state officials who were sinecures, and who were very obnoxious ones, and made large fees. I presume that the fear of such a thing induced the provision in question.

The CHAIRMAN. Yes; that is all covered today in the bureau of standards in the department.

Mr. GORDON. Mr. Chairman: May I ask the chair whether he could tell me what the thought was of Mr. McSparran in advocating the retention of this article?

The CHAIRMAN. I do not recall that he expressed it; it was an amendment that he submitted, but did not discuss it.

Mr. GORDON. Mr. Chairman: I withdraw my motion then.

The CHAIRMAN. The chair hears no motion to adopt the proposed amendment, and it will be dropped.

ARTICLE III, SECTION 33-A (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 33-A of article III.

The secretary read the proposed new section submitted in writing by A. R. Hatton, Western Reserve University, Cleveland, Ohio, for the Peoples Association of Pennsylvania, as follows:

Section 33-A (New)

Add as section 33-A the following new section:

Section 33-A. Bills may be introduced in either house of the general assembly by the governor or the head of an executive department. The governor and heads of executive departments shall be privileged to appear before either house regarding any measure referred thereto. It shall be the duty of the governor or of any head of an executive department, upon notice of at least three days, to appear before either house of the general assembly when requested so to do by not less than one-fifth of the members thereof, to be questioned concerning any matter specified in such notice.

Mr. PINCHOT. Mr. Chairman: I would like to move the adoption of the section with an amendment by adding after the words "general assembly and" the words "in accordance with the rules of the respective houses," so as to make it read: "The governor and heads of executive departments shall be privileged to appear before either house of the general assembly and in accordance with the rules of the respective houses to discuss any measure introduced therein."

The CHAIRMAN. The chair hears no second to the motion, and the suggested amendment will be dropped.

Mr. CARSON. Mr. Chairman: Before you put the motion to recess, sir, I should like to ask that these suggestions of the committee of the Law Association of Philadelphia, which have been typewritten and distributed to the members, should be put in print over night. I understand that we can have printed copies of it on our desks tomorrow morning. I have been so informed.

The CHAIRMAN. We will do the best we can to have it printed. I do not know exactly what shape the state printery is in, but we will do the very best we can. That is a part of the judiciary article?

Mr. CARSON. Mr. Chairman: Yes; it goes all the way through the constitution.

RECESS.

Mrs. MILLER. Mr. Chairman: I move that the committee do now take a recess until 8 o'clock P. M.

Mrs. WARBURTON. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 5.30 o'clock P. M., the committee took a recess until 8 o'clock P. M.

AFTER RECESS.

The committee reconvened at 8 o'clock P. M.

The Chairman, William I. Schaffer, in the chair.

The CHAIRMAN. The hour fixed for the reconvening of the committee of the whole having arrived, the committee will be in order.

ARTICLE IV, SECTION 1.

The committee of the whole proceeded to the consideration of section 1 of article IV, and suggested amendments.

The secretary read the section and amendment suggested by Hon. George Woodward, of Philadelphia, as follows:

1 The executive department of this commonwealth shall consist of a governor,
2 lieutenant governor, secretary of the commonwealth, attorney general, auditor
3 general, state treasurer, secretary of internal affairs, superintendent of public
4 instruction and the heads of such departments as may exist from time to time
5 by legislative enactment.

Amend by striking out on lines 3 and 4 the words [secretary of internal affairs, superintendent of public instruction].

Mr. CARSON. Mr. Chairman: I move that the amendment be adopted.

Mrs. MILLER. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

The CHAIRMAN. The chair calls attention to the fact that if this is adopted we will have to recast a great deal of the work that we have done.

Mr. REED. Mr. Chairman: It seems to me, considering the complications that may arise in various directions, that we ought not to do this hastily.

The CHAIRMAN. In the constitution of 1874 the secretary of internal affairs and superintendent of public instruction were constitutional officers; the amendment would strike them out of the constitution.

Mr. FISHER. Mr. Chairman: May I ask what purpose is to be accomplished by striking it out?

Mr. CARSON. Mr. Chairman: I thought that we agreed that the secretary of internal affairs should be stricken out.

The CHAIRMAN. In the tentative draft, the chair recalls, the secretary of internal affairs as made appointive and not an elective officer. We did not strike it out of the constitution.

Mr. CARSON. Mr. Chairman: I do not want to embarrass the work of the commission, but I thought we had agreed on that.

The CHAIRMAN. In the tentative draft as adopted it in the form that it is at the top of that page and without the amendment.

Mr. FISHER. Mr. Chairman: If these officers are stricken out of the constitution will it not be necessary to have the departments created by legislation, and would you not be without these departments in the interim?

Th CHAIRMAN. I think that is likely to be the result. It would have to be provided for in some form. They are now constitutional officers.

Mr. GORDON. Mr. Chairman: Do I understand the suggestion is because they are appointive officers therefore they should not be included in the list of executive officers?

The CHAIRMAN. No, sir; the chair's suggestion was that they are now constitutional officers. If they are stricken out of the constitution, as this amendment would strike them out, they would cease to be constitutional officers; that is what the result of this amendment would be.

Mr. REED. Mr. Chairman: On page 30 you see his duties, and that same thing would apply to the superintendent of public instruction.

Mr. CARSON. Mr. Chairman: I withdraw my motion.

The CHAIRMAN. The chair hears no motion to adopt the suggested amendment, and it will be dropped.

The secretary read the amendment submitted by A. R. Hatton, for the Peoples Association of Pennsylvania, as follows:

Amend by striking out on line 2 the words [lieutenant governor].

This amendment was not called up.

ARTICLE IV, SECTION 4.

The committee of the whole proceeded to the consideration of section 4 of article IV, and suggested amendment.

The secretary read the section and amendment submitted by A. R. Hatton, for the Peoples Association of Pennsylvania, as follows:

Section 4. Lieutenant Governor.

1 A lieutenant governor shall be chosen at the same time, in the same manner,
2 for the same term, and subject to the same provisions as the governor; he
3 shall be president of the senate, but shall have no vote unless they be equally
4 divided.

Strike out.

This amendment was not called up.

ARTICLE IV, SECTION 5.

The committee of the whole proceeded to the consideration of section 5 article IV, and suggested amendment.

The secretary read the section and amendment submitted by A. R. Hatton for the Peoples Association of Pennsylvania, as follows:

Section 5. Qualifications of Governor and Lieutenant Governor.

1 No person shall be eligible to the office of governor or lieutenant governor
2 except a citizen of the United States, who shall have attained the age of thirty
3 years, and have been seven years next preceding his election an inhabitant of the
4 state, unless he shall have been absent on the public business of the United
5 States or of his state.

Amend by striking out on line 1 the words [or lieutenant governor].

This amendment was not called up.

ARTICLE IV, SECTION 6.

The committee of the whole proceeded to the consideration of section 6 of article IV and suggested amendment.

The secretary read the section and amendment submitted by A. R. Hatton for the Peoples Association of Pennsylvania, as follows:

Section 6. Disqualifications.

1 No member of Congress or person holding any office under the United States
2 or this state shall exercise the office of governor or lieutenant governor.

Amend by inserting a period after the word "governor" on line 2 and by striking out the words [or lieutenant governor] on line 2.

This amendment was not called up.

ARTICLE IV, SECTION 8.

The committee of the whole proceeded to the consideration of section 8 of article IV and suggested amendment.

The secretary read the section and amendment submitted by the chair, as follows:

Section 8. Appointing Power of Governor.—Vacancies.—Confirmation by Senate.

1 The governor shall nominate and, by and with the advice and consent of a
2 majority of all the members of the senate, appoint a secretary of the com-
3 monwealth, an attorney general and a secretary of internal affairs during his
4 pleasure, a superintendent of public instruction for four years, and such other
5 officers of the commonwealth as he is or may be authorized by the constitution
6 or by law to appoint.
7 In offices to which he may appoint, the governor shall have power to fill all
8 vacancies that may occur during the recess of the senate or within ten days
9 before final adjournment, by granting commissions which shall expire at the end
10 of their next session, but before final adjournment of such session he shall
11 nominate some one for the full or unexpired term as the case may require;
12 failure of the governor to so nominate shall be an equivalent to a rejection of
13 any person commissioned during the session in which the vacancy occurred or
14 the recess following the final adjournment of the same; he shall have power to
15 fill any vacancy that may occur during the recess of the senate or within ten
16 days before the final adjournment in the office of the auditor general, state treas-
17 urer, in a judicial office, or in any other elective office which he is or may be
18 authorized to fill.
19 If a vacancy occurs during the session of the senate, in an appointive or
20 elective office, except within ten days before final adjournment, the governor
21 shall nominate to the senate before final adjournment a proper person to fill
22 said vacancy. If the governor shall not so nominate, he shall not have the
23 power to commission any person to fill such vacancy during the recess following
24 the final adjournment of such session.
25 In the case of a vacancy in an elective office, a person shall be chosen to said
26 office on the next election day appropriate to such office according to the pro-
27 visions of this constitution, unless the vacancy shall occur within sixty days
28 immediately preceding such election day, in which case the election for said
29 office shall be held on the second succeeding election day appropriate to such
30 office.
31 No person nominated for an office of trust or profit under the government of
32 this state, who fails to receive confirmation before recess, shall be eligible to
33 appointment to such office during recess. In acting on executive nominations, the
34 Senate shall sit with open doors, and, in confirming or rejecting nominations of
35 the governor, the vote shall be taken by yeas and nays and shall be entered on
36 the journal.

Amend by striking out on line 4 the words [a superintendent of public instruction] and insert in lieu thereof the words *a commissioner of education.*

Mr. REED. Mr. Chairman: I move that the amendment be adopted.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

The CHAIRMAN. The same amendment will be necessary then in section 1 of article IV which we have already passed, on the top of page twenty-five, change the word of superintendent of public instruction to commissioner of education.

RECONSIDERATION OF VOTE ON SECTION 1 OF ARTICLE IV.

Mr. REED. Mr. Chairman: I move to reconsider the vote by which section 1 of article IV was adopted.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question recurring.

Will the committee agree to the section:

Mr. REED. Mr. Chairman: I move to amend section 1 of article IV in line four by striking out the words "superintendent of public instruction" and inserting in lieu thereof the words "commissioner of education."

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question.

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE IV, SECTION 8.

The secretary read the amendment submitted by A. R. Hatton, for the Peoples Association of Pennsylvania, as follows:

Amend by inserting a comma and the words *a state treasurer* immediately after the words "general" on line 3 and by striking out all after the comma on line 5 and inserting in lieu thereof the words *and all other heads of executive departments except as otherwise provided in this constitution.*

Further amend by striking out the words [state treasurer] on line 16, paragraph 2; by striking out the words [or elective] on line 20, third paragraph; and by striking out all of the fourth paragraph.

This amendment was not called up.

The secretary read the amendment suggested by Hon. George Woodward, of Philadelphia, as follows:

Amend by inserting in first paragraph, line 3, after the word "commonwealth" the word *and;* by striking out on line 3 the words [and a secretary of internal affairs]; and by striking out on line 4 the words [a superintendent of public instruction for four years].

This amendment was not called up.

On the question,

Will the committe agree to the section as amended?

It was agreed to.

ARTICLE IV, SECTION 8-A (NEW).

The committee of the whole proceeded to the consideration of the suggested new section 8-A of article IV.

The secretary read the proposed new section submitted by Albert Smith Faught, Esq., Secretary, Pennsylvania Civil Service Reform Association, Philadelphia, Pa., at public hearings April 14, 1920, as follows:

Section 8-A (New).

Appointments and promotions in the civil service of the state and of all the civil divisions thereof, including counties and cities, shall be made according to merit and fitness to be ascertained so far as practicable by examination, which so far as practicable shall be competitive.

Mr. PINCHOT. Mr. Chairman: I move the adoption of that amendment.

Mr. THORPE. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. CARSON. Mr. Chairman: May I ask for information, as to whether gentlemen think it necessary to adopt that? Is not that already a part of the existing statute law which organized civil service boards? I believe Mr. Pinchot made a motion that it be adopted. I should like to know why he thinks it necessary.

Mr. PINCHOT. Mr. Chairman: So far as I understand it there is no provision for appointment by merit in the statute.

The CHAIRMAN. There is no constitutional provision covering civil service.

Mr. PINCHOT. Mr. Chairman: There is no legal provision, as I understand it, concerning ordinary appointees of the state. For instance, if I want a stenographer in the department of forestry, I do not have to go to the civil service commissioner; I go and find a stenographer.

The CHAIRMAN. That is correct.

Mr. PINCHOT. Mr. Chairman: I feel from a very considerable experience that it would be to the advantage of the state administration always to have the merit system adopted rather than the present system, and it is for that reason that I made my motion.

ARTICLE IV, SECTION 8-B (NEW).

The committee of the whole proceeded to the consideration of suggested new section 8-B of article IV.

The secretary read the proposed new section submitted by Albert Smith Faught, Esq., Secretary, Pennsylvania Civil Service Reform Association, Philadelphia, Pa., at public hearings April 14th, 1920, as follows:

Section 8-B (New).

Appointed officers other than judges of the courts of record may be removed in such manner as may be provided by law.

This amendment was not called up.

ARTICLE IV, SECTION 9.

The committee of the whole proceeded to the consideration of section 9 of article IV and suggested amendments.

The secretary read the section and amendment submitted by Edwin M. Abbott, Esq., Philadelphia, Pa., at public hearings April 7, 1920, as follows:

Section 9. Pardoning Power.

1 He shall have power to remit fines and forfeitures, to grant reprieves, com-
2 mutations of sentence and pardons, except in cases of impeachment; but no
3 pardon shall be granted, nor sentence commuted, except upon the recommenda-
4 tion in writing of the lieutenant governor, secretary of the commonwealth, at-
5 torney general and secretary of internal affairs, or any three of them, after full
6 hearing, upon due public notice and in open session, and such recommendation,
7 with the reasons therefor at length, shall be recorded and filed in the office of
8 the secretary of the commonwealth.

Amend by striking out on line 2 the words [commutations of sentence and pardons] and inserting in lieu thereof the words *commutation of sentence, pardons and conditional pardons.*

Amend further by inserting on line 3 after the word "recommendation" the words *of a majority of a board of pardons to be created by act of the general assembly. Until such board of pardons is created no pardon shall be granted nor sentence commuted except upon the recommendation.*

Mr. PINCHOT. Mr. Chairman: May I rise to an inquiry? In section 9, pardoning power, I observe that while reprieves are provided for and commutation of sentences, paroles are not.

The CHAIRMAN. The parole system is already in force. In its present workings under the law all convicts may be paroled by the inspectors of the penitentiary. Theoretically they are paroled by the pardoning board. The pardoning board reviews recommendations of the inspectors and the paroles are signed by the pardoning board, but the pardoning board does not make the suggestions. The whole system is worked out by the inspectors of the penitentiaries. The purpose of the first amendment is to work out a system of conditional pardons which we have never had, in Pennsylvania.

Mr. FOX. Mr. Chairman: I move the adoption of the amendment.

Mr. REED. Mr. Chairman: I think we ought to hear from either the chair or some other member of the pardoning board as to the necessity for these changes.

The CHAIRMAN. The chair's own experience in the matter is that these changes are not advisable.

Mr. CARSON. Mr. Chairman: My own experience would confirm that. I do not think it is advisable from what I saw of it. I do not know whether any changes have taken place since I was attorney general.

The CHAIRMAN. The proposition is to have a separate board of pardons created by legislature, and Mr. Carson knows that, in a very peculiar way, the board of pardons functions very closely to the governor, and to have a board created entirely outside of the attorney general and the secretary of the commonwealth would put the pardoning power really away beyond the governor, in which event the governor would be sort of a rubber stamp in the matter.

Mr. PEPPER. Mr. Chairman: I am ignorant on the subject of conditional pardons. Does what the chair said cover that point? I should like a little light on what is involved in that proposition.

The CHAIRMAN. As I understand it,—I do not know that I understand very much about it, Mr. Pepper,—but as I understand it, conditional pardons are pardons granted to convicts upon condition that they do certain things. It seems to me that in our contemplation of pardons in Pennsylvania pardons ought not be conditional. I mean a man is pardoned or not pardoned. If he is pardoned his offense is wiped out in the eye of the law, and it is a part of Mr. Abbott's desire to recast the present system of the state to which he has given a great deal of attention and time and energy, but it seems to me that it is out of harmony with our system.

Mr. PEPPER. Mr. Chairman: I can understand on general principles of conduct that the existence of such a thing as a conditional pardon might be a very great incentive to good conduct on the part of the prisoner.

The CHAIRMAN. A recent investigation of this question in my department, Mr. Pepper, has convinced me that the pardoning board has the power to conditionally pardon now; that is, the greater power includes the lesser.

Mr. PEPPER. Mr. Chairman: If the board of pardons could make it known officially that a pardon would ensue if such and such a course of conduct is fulfilled?

The CHAIRMAN. Yes; if a man left the country, or did anything else that the board of pardons might stipulate.

There being no second to the motion to adopt the suggested amendment, it will be dropped.

The secretary read the amendment submitted by A. R. Hatton, Esq., for the Peoples Association of Pennsylvania, as follows:

Amend by striking out the words [lieutenant governor] on line 4 and inserting in lieu thereof the words *president of the senate.*

This amendment was not called up.

The secretary read the amendment suggested by Hon. George Woodward, of Philadelphia, as follows:

Amend by striking out on line 5, the words [secretary of internal affairs] and inserting in lieu thereof the words *such other public offices as may be designated by law.*

This amendment was not called up.

ARTICLE IV, SECTION 13.

The committee of the whole proceeded to the consideration of section 13 of article IV and suggested amendments.

The secretary read the section and amendment submitted in writing by H. K. Siebeneck, Esq., of Pittsburgh, Pa., and also by the Civic Club of Allegheny County, Pittsburgh, Pa., as follows:

Section 13. When Lieutenant Governor Shall Act.

1 In case of the death, conviction or impeachment, failure to qualify, resigna-
2 tion, or other disability of the governor, the powers, duties and emoluments of
3 the office, for the remainder of the term, or until the disability be removed, shall
4 devolve upon the lieutenant governor.

Amend by adding at the end thereof the following: *The general assembly shall by law fix the method of determining the disability of the governor.*

Mr. REED. Mr. Chairman: How would you fix the disability of the governor under the present constitution? We have a case at present in this country where the question of disability or the method of arriving at it might become very serious. Would it be well to consider this? I never knew a governor to admit that he was disabled. Just to bring it up I will make a motion that it be adopted.

Mr. GORDON. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. GORDON. Mr. Chairman: If it is a fact that it would not be *scandalum magnatum* to say so, there is a question as to whether the chief executive of the nation was under a physical or mental cloud, and it was a mooted question in the Congress how the disability of the executive ought to be determined. I think the very general opinion was that it was a matter for legislative determination. I think the legislature might by the appointment of a committee or otherwise obtain such information as it could receive as to the mental or physical condition of the chief executive, and if it determined that he was disabled, proceed in accordance with the constitution to make that a matter of legislative record and judgment. But it was conceded all around, I think, that there was no precedent and no method, but it was inherent in the legislative body as a deduction from constitutional provision, and our constitution is in the same position. Of course, it would be much better to have a think like that determined and fixed by law. I can conceive very well how a very great national disaster might have happened probably, if the Congress had declared the president disabled and if the vice-president thereupon assumed to exercise the functions of president and the president himself had assumed to exercise the same function, and there would have been two executives and civil war and very many disasters might have resulted. It would be prudent, I think, to provide that the power should be in the legislative assembly, but that provision ought to be carefully drawn, and I do not suppose it could be drawn tonight hurriedly by any member here present.

Mr. REED. Mr. Chairman: We might adopt this as a tentative sort of proposition and let the committte on style fix it up.

The CHAIRMAN. It would seem that it would be a wise thing to make some provision for determining the disability of the governor, if that question should ever arise. It is in the air now.

Mr. REED. Mr. Chairman: This is the time to do it, while we have an exceedingly able governor.

Mr. GORDON. Mr. Chairman: We may not have him long.

Mr. CARSON. Mr. Chairman: It will happen some day; of course, it is bound to happen some time.

Mr. FISHER. Mr. Chairman: I shall not undertake to say that it is not wise to make some provision for the disability of the governor. We have gone along many years in the state and in the nation without meeting such an eventuality as confronted us recently in the nation. It has impressed us that occasions may arise when it is necessary for some power to determine whether or not the chief executive of the state has been incapacitated, but it does seem to me that it is dangerous to put that power in a coordinate branch. If you put it in the hands of the legislature they can act any time and perhaps might act in times of great passion and do great injustice, and the harm that would be done would be very much greater than any possible good that might arise; and it does seem to me that if we are going to attempt a solution of this problem it would be wiser for us to put a provision in here defining the disabilities rather than leaving it to the judgment of the legislature.

The CHAIRMAN. How would it be to put the question up to the supreme court to determine whether there is a disability?

Mr. THORPE. Mr. Chairman: Might it not be well to let this matter lie over and put it to a special committee named by the chair? I might recall to your memory that it says in the Federal Constitution, "In case of the removal of a president from office, or of his death or resignation, or inability to discharge the powers and duties of the said office the same shall devolve on the vice-president, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disabiilty be removed, or a president shall be elected." Now, as this is a grave matter let it go over for a few hours, place it in the hands of several of our colleagues, and let it be seriously considered, because, as Mr. Carson says, it is bound to occur some time; if it has occurred once in the federal government, it may occur in our commonwealth.

Mr. CARSON. Mr. Chairman: There are automobile accidents, and his automobile might break down.

The CHAIRMAN. The chair hopes that things will not be left in the air and have amendments scattered through the calendar which have not been passed upon. Judge Gordon's suggestion would be wiser, that we put this to the committee on style so that at some future time we can alter this provision.

Mr. THORPE. Mr. Chairman: Senator Fisher has mentioned the matter whether or not the constitution might name certain disabilities of the nature in a generic fashion so that the court or the legislature might have some guidance in the matter, and not merely that a political infirmity should be the cause, and naming the disability.

Mr. GORDON. Mr. Chairman: I think under the present constitution—I hope some member will correct me if I am wrong—even a judge cannot be removed from office because of disability without hearing and without notice, without notice and a hearing, and I pre-

sume that it would accord with judicial and semi-judcial precedent in the case of a proceeding against an executive for disability that he should have an opportunity to be heard.

Mr. PEPPER. Mr. Chairman: This provision is from many points of view, it seems to me, an admirable one just as it stands. Am I not right in thinking that that provision could never be availed of by the legislature to declare the disability of a governor in a particular case that was before the minds of the people at the time, because the provision is that the declaration or determination of the method shall be by law, and that involves the signature of the governor or at least the passage of it over a veto? It seems to me that if it were desired to safeguard the contingency of a legislature passing an act that was applicable to the case of a governor then in office it would be easy by proviso to declare that no law passed by the legislature fixing the method of determining executive disability should be applicable to a governor in office when the law went into effect.

Mr. REED. Mr. Chairman: You may want it the next day.

Mr. PEPPER. Mr. Chairman: Judge Reed's suggestion that the law might be needed the next day is very true, but it is better to run the risk of such a thing than it is to run the risk of the use by the legislature of the power to unseat the executive. I should propose as an amendment to the measure under consideration, the following: The general assembly shall by law prescribe the method of determining the disability of the governor; provided, that no such law shall be applicable to a governor in office at the date when the law becomes effective."

Mr. GORDON. Mr. Chairman: I should like to ask of Mr. Pepper whether a provision of this definiteness as to the authority to determine disability is not of first importance, just as the provision in the constitution as to impeachment and removal from office. It is there provided what body shall have the power to impeach and what body shall have the power to try and remove, and so this should not be a fluctuating removal depending upon the varying changes in the legislature. The constitution ought to state what authority should try and determine the question of disability.

Mr. THORPE. Mr. Chairman When this question came up for discussion originally in the convention I recall—Mr. Carson will correct my memory—they were a little puzzled as to where to place the impeaching of the president. Is this proceeding on the disability of the governor to bring a judicial procedure or legislative procedure, or both? It should be determined. They decided when Mr. Johnson was impeached to be very careful to call themselves the senate sitting as a court, sitting for impeachment, and did not call themselves a judicial body. They did not call themselves a legislative body, but they called themselves a court for impeachment. I think Senator Edmonds told me a great deal about that. Of course, it was history, and they were quite careful. It was a new thing; they did not sit as a judicial body; they did not sit as a legislative body; but they sat as a particular body for a particular and for an extraordinary purpose.

Mr. VOLL. Mr. Chairman: May I ask this question and make this suggestion? Might not the danger that is created by passing this amendment become greater than the danger of the govenor's becoming disabled and putting it in the hands of the legislature?

Mr. PEPPER. Mr. Chairman: I think there is so much force in what has been said by the several gentlemen who have spoken since I spoke that, notwithstanding the desire of the chair to deal with these questions as they arise, I move that this mater be passed for the moment and request that an opportunity be given to bring it up a little later when the members of the commission have time to confer.

The CHAIRMAN. If there is no objection, the subject will be passed for the present.

Mr. FOX. Mr. Chairman: I just contemplated making a suggestion which may possibly solve the difficulty to the satisfaction of the commission. How would it do to provide that when any question as to the disability of the executive arises it shall be determined by the supreme court upon the address of the legislature requesting a determination of this question?

The CHAIRMAN. I suppose that is one of the things that could be taken into account by Mr. Pepper and the other gentlemen who after conferring will formulate a suggestion. We will pass this for the present and it will be taken up again when Mr. Pepper has drafted something to his own satisfaction.

The secretary read the amendment submitted by A. R. Hatton, Esq., for the Peoples Association of Pennsylvania, as follows:

Amend by striking out on line 4 the words [lieutenant governor] and inserting in lieu thereof the words *president of the senate*, and by adding thereto the following: *If the president of the senate succeed to the office of governor his seat as senator shall become vacant, and shall be filled by election as any other vacancy in the Senate. If a vacancy or disability occur in the office of governor during a vacancy in the office of president of the senate, then the secretary of the commonwealth, or, in case of a vacancy in that office, the attorney general, shall become governor.*

The CHAIRMAN. This amendment would only be operative if we had adopted the amendment of Mr. Hatton to strike out the office of lieutenant governor from the constitution. If the chair is correct, I think as we have retained the lieutenant governor this suggested amendment would fall.

There being no motion for its adoption, the amendment will be dropped.

ARTICLE IV, SECTION 14.

The committee of the whole proceeded to the consideration of section 14 of article IV and suggested amendments.

The secretary read the section and amendment submitted by A. R. Hatton, Esq., for the Peoples Association of Pennsylvania, as follows:

Section 14. Vacancy in Office of Lieutenant Governor.

1 In case of a vacancy in the office of lieutenant governor, or when the lieutenant
2 governor shall be impeached by the house of representatives, or shall be unable
3 to exercise the duties of his office, the powers, duties and emoluments thereof
4 for the remainder of the term, or until the disability be removed, shall devolve
5 upon the president pro tempore of the senate; and the president pro tempore of
6 the senate shall in like manner become governor if a vacancy or disability shall
7 occur in the office of governor; his seat as senator shall become vacant when-
8 ever he shall become governor, and shall be filled by election as any other
9 vacancy in the senate; and the secretary of the commonwealth, or in case of
10 a vacancy in that office, then the attorney general, shall in like manner become
11 governor if a vacancy or disability shall occur in the office of the governor
12 during a vacancy in both the office of lieutenant governor and the office of presi-
13 dent pro tempore of the senate.

Strike out.

The CHAIRMAN. This suggested amendment is to strike out the provisions of section 14 of article IV relating to vacancies in the office of lieutenant governor, and this amendment would likewise fall. The reason for striking it out was because of Mr. Hatton's former suggested amendment to do away with the office of lieutenant governor. As we have not followed that suggestion, this amendment will fall.

Mr. CARSON. Mr. Chairman: What was his objection to the office of lieutenant governor?

The CHAIRMAN. I do not know. If there is no objection, this suggestion will be dropped.

The secretary read the amendment submitted in writing by Hon. George Woodward, of Philadelphia, as follows:

Amend by striking out all after the word "senate" on line 6 and inserting the following: *If a vacancy shall occur in the office of governor, the lieutenant governor shall become governor for the remainder of the term or until the disability be removed, and his seat as senator shall become vacant and shall be filled by election as in any other vacancy in the senate. If a vacancy or disability shall occur in the office of the governor during a vacancy in the office of lieutenant governor, the secretary of the commonwealth, or, in case of a vacancy in that office, then the attorney general shall in like manner become governor. And in case of vacancies at one time in the offices of lieutenant governor, secretary of the commonwealth and attorney general, then, on the fifth day subsequent to such combined vacancies, at twelve o'clock noon, in the senate chamber in the capitol, the clerk of the senate or other officer designated by the majority of the senators there and then assembled shall call the senate into session and the senate shall forthwith proceed to elect a governor, and the person receiving a majority of the votes of the senators present shall be declared elected.*

The CHAIRMAN. This amendment, as the secretary advises, me, is an amendment intended to take care of the situation that would arise if all the executive officers of the state should die at the same time, and provides that the senate shall be convened and elect a governor.

Mr. CARSON. Mr. Chairman: They ought never to travel together so as to invite a difficulty from a common disaster.

Mr. REED. Mr. Chairman: That changes the succession as it exists under the present provision. As I understand it, it devolves the duties upon the president pro tempore of the senate.

The CHAIRMAN. The chair hears no motion to adopt this suggested amendment, and it will be dropped.

ARTICLE IV, SECTION 16.

The committee of the whole proceeded to the consideartion of section 16 of article IV and suggested amendment.

The secretary read the section and amendment submitted in writing by the Bureau of Municipal Research, of Philadelphia, as follows:

Section 16. Partial Disapproval of Appropriation Bills.

1 The governor shall have power to disapprove of *or reduce* any items or items
2 of any bills making appropriations of money, embracing distinct items, and the
3 part or parts of the bill approved shall be the law, and the *part or parts* [item
4 or items] of appropriation disapproved, shall be void unless repassed according
5 to the rules and limitations prescribed for the passage of other bills over the
6 executive veto.

Amend as follows:

Strike out the words [embracing distinct items] on line 2.

Strike out the words [of appropriation] on line 4.

This amendment was not called up.

ARTICLE IV, SECTION 17.

The committee of the whole proceeded to the consideration of section 17 of article IV and suggested amendment.

The secretary read the section and amendment submitted by A. R. Hatton, Esq., for the Peoples Association of Pennsylvania, as follows:

Section 17. Contested Election of Governor or Lieutenant Governor.—Holding Over.

1 The chief justice of the supreme court shall preside upon the trial of any
2 contested election of governor or lieutenant governor and shall decide questions
3 regarding the admissibility of evidence, and shall, upon request of the committee,
4 pronounce his opinion upon other questions of law involved in the trial. The
5 governor and lieutenant governor shall exercise the duties of their respective
6 offices until their successors shall be duly qualified.

Amend by striking out the words [or lieutenant governor] on line 2 and the words [and lieutenant governor] on line 5, and by striking out all after the word "of" on line 5 and inserting in lieu thereof the words *his office until his successor shall be duly qualified.*

The CHAIRMAN. The chair understands this suggested amendment was to be adopted in the event that Mr. Hatton's suggested amendment to strike out the office of lieutenant governor from the constitution should be adopted. If the chair is correct, I think this suggested amendment would have no place in the constitution, as we have not adopted his suggested amendment recommending that the office of lieutenant governor be stricken out.

Mr. CARSON. Mr. Chairman: I do not understand why Mr. Hatton exerted himself to get rid of the lieutenant governor and revamp him, so to speak, in this amendment.

The CHAIRMAN. He may not like the lieutenant governor.

There being no motion to adopt this suggested amendment, it will be dropped.

ARTICLE IV, SECTION 19.

The committee of the whole proceeded to the consideration of section 19 of article IV and suggested amendments.

The secretary read the section and amendment submitted by A. R. Hatton, Esq., for the Peoples Association of Pennsylvania, as follows:

Section 19. Secretary of Internal Affairs.

1 The secretary of internal affairs shall exercise all the powers and perform all
2 the duties of the surveyor general, subject to such changes as shall be made by
3 law. His department shall embrace a bureau of industrial statistics, and he
4 shall discharge such duties relating to corporations, to the charitable institu-
5 tions, the agricultural, manufacturing, mining, mineral, timber and other mate-
6 rial or business interests of the state as may be prescribed by law. He shall
7 annually, and at such other times as may be required by law, make report to
8 the general assembly.

Amend by striking out all after the word "changes" on line 2 and inserting in lieu thereof the words *and additions as may be made by law.*

This amendment was not called up.

The secretary read the amendment submitted by Hon. George Woodward, of Philadelphia, as follows:

Strike out.

This amendment was not called up.

The secretary read the section and amendment submitted in writing by the Chairman, as follows:

Amend by striking out on line 7 the word [annually] and substituting therefor the word *biennially.*

The CHAIRMAN. This suggested amendment provides that the word "biennially" should be inserted in this section instead of the word "annually," all reports now being made biennially instead of annually to the general assembly because the general assembly is only in session biennially.

Mr. REED. Mr. Chairman: I move the adoption of this amendment.

Mr. THORPE. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE IV, SECTION 20.

The committee of the wohle proceeded to the consideration of section 20 of article IV and suggested amendment.

The secretary read the section and amendment submitted by Hon. George Woodward, of Philadelphia, as follows:

Section 20. Superintendent of Public Instruction.

1 The superintendent of public instruction shall exercise all the powers and
2 perform all the duties of the superintendent of common schools, subject to such
3 changes as shall be made by law.

Strike out.

Mr. REED. That ought to be modified so as to read "the commissioner of education."

The CHAIRMAN. That is the thought I had in mind.

There being no motion to adopt this amendment, it will be dropped.

Mr. REED. Mr. Chairman: I move to amend the section by striking out the words "superintendent of public instruction" and inserting in lieu thereof the words "commissioner of education."

Mr. CARSON. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. THORPE. Mr. Chairman: Is the present incumbent called the superintendent of common schools or is he called the superintendent of public instruction?

The CHAIRMAN. He is called the superintendent of public instruction.

Mr. THORPE. Mr. Chairman: In that case you would have to change the second line.

Mr. REED. Mr. Chairman: It says he shall exercise the powers and perform the duties of the superintendent of common schools.

Mr. THORPE. Mr. Chairman: But there is no superintendent of common schools.

The CHAIRMAN. I think that can be rectified by the committee on style when they reach it.

On the question recurring,

Will the committee agree to the motion?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE IV, SECTION 21.

The committee of the whole proceeded to the consideration of section 21 article IV and suggested amendment.

The secretary read the section and amendment submitted by A. R. Hatton, for the Peoples Association of Pennsylvania, as follows:

Section 21. Terms of Executive Department Officers.—Ineligibility to Re-election.

1 The term of the auditor general and the state treasurer shall each be four
2 years, and they shall be chosen by the qualified electors of the state at general
3 elections. No person elected to the office of auditor general or state treasurer
4 shall be eligible to hold the same office for two consecutive terms.

Amend by striking out the whole section and inserting in leiu thereof the following:

The auditor general shall be chosen by a majority vote of the members elected to the senate and house of representatives meeting in joint session and shall continue in office during the pleasure thereof. If the office of auditor general shall become vacant during the recess of the general assembly, the governor shall fill such vacancy by appointment until the general assembly is next in session.

This amendment was not called up.

ARTICLE IV, SECTION 21-A (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 21-A of article IV.

The secretary read the proposed new section submitted by Hon. Gifford Pinchot, Commissioner, as follows:

Section 21-A (New).

No employe or officer of any department of the state government or of either branch of the legislature shall be in any way interested in any contract with the commonwealth of Pennsylvania or any department thereof, and any contract in which this provision is violated shall be void.

Mr. PINCHOT. Mr. Chairman: I move the adoption of this amendment.

Mr. VOLL. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. PINCHOT. Mr. Chairman: The suggestion for the section, if I may say so, came from a law in the United States government, which substantially prescribes the same thing. I believe from what experience I have had it would be an extremely valuable thing if a provision of this kind should be inserted in the constitution. I have met one or two cases in which apparently the presence of such a provision would have been very valuable. For that reason I ventured to suggest this.

The CHAIRMAN. It suggests itself to the mind of the chair that we are doing a very drastic thing in attempting to write this into the constitution. The provision here is that if any employe or officer of any department of the state government or either branch of the legislature shall be in any way interested in any contract with the commonwealth or any department, the contract shall be void. Now, suppose it should turn out that a member of the legisalture was a stockholder, either by descent or by devise, of a few shares or many shares, it is immaterial how much, and the company had entered into a large contract for a state highway and the contract was partly executed, and this provision should be invoked, then a very serious question would be presented to the state.

Mr. PINCHOT. Mr. Chairman: Would it cure that matter to add a notice in any provision, except the contracts already made, or something of that kind?

The CHAIRMAN. I hardly think so.

Mr. GORDON. Mr. Chairman: I would like to ask Mr. Pinchot whether this is a reproduction of any law of the United States.

Mr. PINCHOT. Mr. Chairman: Not exactly.

Mr. GORDON. Mr. Chairman: I should think not. The provision is too broad. Of course, it is vice in government to have an officer or department which passes upon contracts, authorizes them, votes upon them, fixes the amount of them, or in any other way is concerned in the giving out of the contracts, to have an interest in the contract. But the state of Pennsylvania is a very large corporation, and to exclude an employe of any department from being concerned directly or indirectly in any contract with the commonwealth by any other department officer too remote from the vice to be necessary, and also might exclude the government first, from valuable services of persons engaged in trade, and next, might exclude the commonwealth from being able to make desirable contracts with persons who also in wholly unrelated departments of the government were employed or were officers. Therefore, I think it excludes from all dealing with the commonwealth many thousands, tens of thousands, of people who have no power to make a contract or determine its terms; that there is no vice to be legislated against; and next the legislature is deprived if you will pardon me, by a wholly elusive vice.

Mr. CARSON. Mr. Chairman: Another objection has been suggested to my mind by what Judge Gordon said, and I thought that before he took his seat he would probably express it, but as he has not done so I want to call your attention to these closing words, "any contract in which this provision is violated shall be void." That is a frightful punishment to inflict, perhaps on many innocent people and on the commonwealth itself, simply by a dereliction of a single man to have a contract, set it aside *ab initio* and forbid remedies on it to the loss perhaps of the contractor who in good faith prepared himself for its execution, and in part executed it. To set that aside and make it void simply because it is discovered that a member of the state government is in some way interested in the contract, I think is extending an attempt at remedy far beyond the bounds of reason. It would involve the innocent as well as the guilty.

Mr. GORDON. Mr. Chairman: It does not imply, even imply.

Mr. REED. Mr. Chairman: I was only going to say that the United States Steel Corporation has perhaps one hundred and twenty-five thousand stockholders. The Pennsylvania has, I do not know how many. The Reading Railroad has a large number of stockholders. Now, if the steel corporation should furnish some of the steel for the additions to the capitol, and if it should happen that somebody on the hill here should have ten shares of stock, I suppose the contract would be void. It is a frightful thing to contemplate.

Mr. PEPPER. Mr. Chairman: I was going to suggest this through you, to Mr. Pinchot, that when an official, whether in a public or private corporation, is interested in a contract, it seems to me that if the interest is a dangerous one or inimical to public interest, the way to deal with the situation is either by making the individual

punishable for something that he has not done that is wrong or civilly accountable for any profits that he has made at the expense of his trust. To do as Mr. Carson has pointed out, visit upon possibly entirely innocent people the invalidity of the contract is not making the punishment fit the crime at all. Now, this section does not undertake to make the acquistion of interest in question a misdemeanor or other crime, but it does undertake to punish possibly the innocent for a crime committed by somebody else. If you will fix your attention upon the question of civil accountability for profit made at the expense of the trust, might it not be said that without constitutional provision liabiliy to account in equity exists already, and that in any particular case the state has the remedy which any beneficiary has in a case of unfaithful trustee? It seems to me, therefore, that to punish the innocent is wholly inadmissible; that to make the acquisition of an interest in a contract punishable would be unwise criminal legislation because of the vagueness of the provision, the necessary vagueness of the provision; and that, so far as civil accountability is concerned, equitable jurisdiction furnishes a remedy without constitutional provision. So that from whatever point of view you approach it, I suggest to Mr. Pinchot that he is introducing a provision that ought not to have a place in our tentative draft.

Mr. PINCHOT. Mr. Chairman: May I call to Mr. Pepper's mind, through you, that the constitution contained for many years a provision forbidding the officers and directors of a railroad or other corporation to have any dealings with the company? That provision I believe has been stricken out; nevertheless, it was the constitution for many years, and the situation which I was anxious to meet by this provision, and which I perceive might be met, is precisely that situation. A man in a government position may have very powerful influences to bring to bear on another man in a government position, and especially a man in either branch of the legislature, who controls the appropriation or has a part in controlling the appropriation of the government or department, ought by that very fact to be excluded from having any share or interest of any kind in contracts which may be made by that department. The evil which I am seeking to reach by this provision is a very real one, and has been so recognized by the United States government, as I mentioned some time ago, and has been made, as I recollect, a criminal offense on the part of a congressman or senator to have an interest in this matter; and as I recollect a contract so made is void. I can bring to you, however, if it is in accord with the plans of the Chairman, the exact wording of this provision tomorrow, and I wonder if I can ask that this provision go over until I can do so.

Mr. CARSON. Mr. Chairman: Is that not a case, Mr. Pinchot, where the congressman was making a contract for furnishing supplies to the government, his personal contract with the government, that was declared to be void?

Mr. PINCHOT. Mr. Chairman: No.

Mr. CARSON. I know what you propose goes very much further than that.

Mr. PINCHOT. Mr. Chairman: No; for example, at the time I was in charge of the forestry department of the United States, any contract which I might have made as forester with a company in which a congressman was interested would have fallen within the prohibition of this statute.

The CHAIRMAN. If the congressman was interested in the company?

Mr. PINCHOT. Mr. Chairman: Yes.

The CHAIRMAN. I happen to know of a contract now pending with a company in which I happen to know that a state official is interested although he has nothing to do with the contract, so far as the company is concerned—in which it is very greatly to the advantage of the state to accept the contract, which is a low bid contract, although he as a state official has nothing to do with the granting of the contract at all, but his company's bid is the lowest bid for the work.

Mr. PINCHOT. Mr. Chairman: Under the federal law that cannot be done, as I understand it. With your permission I will bring that federal law tomorrow.

Mr. GORDON. Mr. Chairman: I would like to call your attention to the fact that by statute law—

Mr. PINCHOT. Mr. Chairman: Yes, it is by statute law.

Mr. GORDON. Mr. Chairman: By statute law no director of a corporation or municipality or other corporation can be interested in any contract given by the direction of the corporation of which he is a member, and it is made an offense. There exists such a statute today. I have in mind also an officer, a member of the body which sits in the chamber we occupy now, who has long been a member, who receives contracts for the building and improving of the public roads. I do not know whether that is intended to be aimed at by your clause or not, but your provision would prohibit an industrious school-teacher from knitting wash rags for the legislature. I think that is going too far. We ought to get these things as cheaply as possible.

ARTICLE IV, SECTION 21-A (NEW) POSTPONED.

The CHAIRMAN. Unless there is objection, this section will be passed for the present, to be called up at Mr. Pinchot's discretion.

ARTICLE V.

The CHAIRMAN. The next article is article V, on page 32 of the calendar. As there are certain amendments to the judiciary article which are now being printed, and which we hope to have ready for submission in the morning, the suggestion of the chair is that it be not acted upon at this time, but go over until the amendments are in such shape that they can be considered; otherwise we might have to do our work all over.

Mr. GORDON. Mr. Chairman: You mean leave that go until next week?

The CHAIRMAN. No, sir; until tomorrow.

Unless there is objection, we will pass article V until tomorrow morning and take up article VI.

ARTICLE IV, SECTION 13.

Mr. PEPPER. Before passing away from Article IV, I have endeavored to put into form the suggestion made by Judge Fox a while ago, in connection with the question of determining the disability of

the chief executive. Will it be the chair's wish that that matter be disposed of before passing to the next article?

The CHAIRMAN. It will be entirely agreeable to the Chair to dispose of it now.

The committee of the whole resumed consideration of section 13 of article IV.

The secretary read the section as follows:

Section 13. When Lieutenant Governor Shall Act.

1 In case of the death, conviction or impeachment, failure to qualify, resigna-
2 tion, or other disability of the governor, the powers, duties and emoluments of
3 the office, for the remainder of the term, or until the disability be removed, shall
4 devolve upon the lieutenant governor.

Mr. PEPPER. Mr. Chairman: It will be remembered that the contingency of executive disability is one of several disabilities specified in section 13. They are "death, conviction on impeachment, failure to qualify, resignation," as well as other disabilities. It had occurred to me that in any provision that we might make we should provide for the determination of any contingency with respect to which a question of fact might arise, and I suggest the following for the consideration of the Committee: "In case a question arises whether in fact any such contingency has occurred, such fact shall be ascertained and determined by the supreme court of the commonwealth, upon the address of the general assembly, or if the general assembly be not in session, upon the petition of not less than three-fourths of the members thereof." I offer this as an amendment.

Mr. CARSON. Mr. Chairman: I second the amendment.

On the question.

Will the Committee agree to the amendment?

Mr. FOX. Mr. Chairman: It has long been my custom whenever I do not know the law which happens very frequently, to go to Pepper and Lewis, and having had a suggestion from Mr. Pepper I now want to offer a suggestion from Mr. Lewis, who suggests this as section 14-A: "The fact of disability of the governor or of any officer who on account of the death or disability of the governor would otherwise become governor shall, on the address of a majority of the members elected to both houses of the general assembly, be determined by the supreme court, or if the general assembly be not in session, upon petition of not less than a majority of the members thereof."

The CHAIRMAN. We will have both of them read again. Mr. Lewis will read Mr. Pepper's amendment.

The secretary read the amendment suggested by Mr. Pepper as follows:

In case a question arises whether in fact any such contingency has occurred, such fact shall be ascertained and determined by the supreme court of the commonwealth, upon the address of the general assembly, or if the general assembly be not in session, upon petition of not less than three-fourths of the members thereof.

Mr. PEPPER. Mr. Chairman: It may rest within your memory that on a certain occasion when someone was called upon to interpret Lord Coke's saying, *Meilus est petere fontes quam sectari rivulos*, it was suggested that in its present-day application the maxim means that it is better to consult Schaffer's State Reports than Pepper and Lewis's Digest.

The CHAIRMAN. The secretary will read his own suggestion. The secretary read the suggested amendment as follows:

Section 14-A. The fact of disability of the governor or of any officer who on account of the death or disability of the governor would otherwise become governor shall, on the address of a majority of the members elected to both houses of the general assembly, be determined by the supreme court, or if the general assembly be not in session, upon petition of not less than a majority of the members thereof.

Mr. PEPPER. Mr. Chairman: I think that is better than my own.

Mr. REED. Mr. Chairman: Does that require action of the majority in a session, or can it be done by address of the members?

The CHAIRMAN. The secretary says as worded it might be interpreted to mean only while in session.

Mr. CARSON. Mr. Chairman: That is what occurred to me when I heard it. I was going to ask Judge Fox how you would set the machinery in motion when the legislature is not in session.

Mr. GORDON. Mr. Chairman: I think both of these depart from the necessities of the case. In the first place, there is a misprint in the article as it is before us. It reads, "In case of the death, conviction or impeachment." That should be "conviction on impeachment." The part of the judgment of the court that effects his removal from office, that follows, of course, and therefore need not be included in any provision such as Mr. Pepper or Judge Fox have presented. "In the case of the death." I do not think that need be inquired into by the supreme court upon the address of the majority of each body of the legislature; "failure to qualify," I do not think that need be; "resignation," I do not think that need be; nor do I think that any of those questions should be dependent upon the action of the legislature. The only thing is to ascertain the "other disabilities," and I presume that the phrase is intended to relate to his mental and physical disability exclusively. It cannot mean disability by virtue of his taking another office incompatible with the governorship, because by the very taking of that office he would be ousted from the governorship; but the disability must be personal to himself, physical or mental, and I think this amendment should confine itself to that, but the other steps are not steps which require ascertainment by the legislature or the supreme court. They are physical facts, they are the judgment of the court of impeachment. I submit to my friend, Mr. Pepper, that probably it ought to be confined to those disabilities.

Mr. PEPPER. Mr. Chairman: What Judge Gordon has just said led me a moment ago to express the thought that the secretary's proposal was to be preferred to my own. In dealing with these several contingencies I thought perhaps it was wiser to err on the side of safety, because there may be questions of fact respecting a resignation afterwards sought to be withdrawn; the question of failure to qualify, which would have to be decided, and serious political controversy might arise with respect to it. But I think that is hypercriticism, and that the other disability is the only thing that the secretary's resolution deals with. I think the secretary's resolution makes it sufficiently clear that the address to the legislature might take place whether they be in session or not in session, and that being so I should withdraw my proposal and beg that the other be substituted for it.

Mr. GODON. Mr. Chairman: I think all other questions also would be raised by quo warranto.

Mr. FOX. Mr. Chairman: I just received this suggestion from the secretary, that in addition to the clause which covers the suggestion contained in Mr. Pepper's draft, there should be added: "or if the general assembly be not in session, upon the petition of not less than a majority of the members of the general assembly."

The CHAIRMAN. Is the amendment suggested by Judge Fox seconded?

Mr. FISHER. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. CARSON. Mr. Chairman: May I ask Judge Fox the effect of the words "other disability"? I would prefer to take Judge Gordon's clear definition of it. What we have in mind is mental or physical disability. I do not see why we should not say so. "Other disability"—it is too vague. If a man is out of his mind, in a raging fever, or has in some way been stricken by paralysis so that the physical inability is not necessarily hopeless, or matters of that sort, it all comes down to a question of the mental or physical condition.

Mr. PEPPER. Mr. Chairman: We are using here in this resolution the language of disqualification as it appears in the body of the section. The place to make the change, in the interest of greater clearness, is not in this part of the section that we are now dealing with, but in the specification of the contingency in which the subordinate officials shall succeed.

Mr. CARSON. I am not assailing your draft. Do not take that as personal criticism at all.

Mr. PEPPER. It was not that, Mr. Carson; all I meant to say is that the wording of what one might call the enacting clause of the section specifies "other disability" without some specific definition.

Mr. CARSON. I know that always puzzles the court.

Mr. GORDON. Mr. Chairman: I do not think the word "other" is properly used.

Mr. PEPPER. We may change it.

Mr. GORDON. This is not "disability," "conviction on impeachment" is not "disability," and "resignation" is not "disability."

Mr. FISHER. Might not misconduct in office be disability?

Mr. GORDON. Not unless on conviction on impeachment. I think the word there used "other," means disability.

Mr. FOX. Mr. Chairman: Would it not be well to follow this suggestion which Mr. Carson has made and amend the entire section so as to strike out the words "all other disability" and insert instead "either physical or mental disability of the governor"?

The CHAIRMAN. Might there not be the disability that the governor might be inaccessible to the state? He might to to Mexico, or war might be declared.

Mr. GORDON. He might be a captive.

Mr. PEPPER. Mr. Chairman: I suggest, sir, that we meet the difficulty if we strike out the word "other" and let the term "disability" stand, and then leave the question of what is disability and whether a disability has in fact occurred to be determined by the supreme court upon the address of the legislature, or upon petition of three-fourths of the members of the legislature if it be not in session. I should, with Mr. Fox's permission, move, first, to strike out the word "other" in the body of the sentence.

Mr. GORDON. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question recurring,

Will the committee agree to the amendment as amended?

It was agreed to.

ARTICLE VI, SECTION 4.

The committee of the whole proceeded to the consideration of section 4 of article VI and suggested amendments.

The secretary read the section and amendment submitted in writing by T. F. Chrostwaite, President, Pennsylvania State Association of Boroughs, Hanover, Pa., as follows:

Section 4. Tenure of Office.—Removals from Office.

1 All officers shall hold their offices on the condition that they behave them-
2 selves well while in office and on conviction of misbehavior in office or of any
3 infamous crime, in addition to the penalties provided by law, the court shall order
4 the removal of such officer from office. Appointed officers, other than judges of
5 the courts of record and the superintendent of public instruction, may be removed
6 at the pleasure of the power by which they shall have been appointed. All
7 officers elected by the people, except governor, lieutenant governor, members of
8 the general assembly and judges of the courts of record learned in the law,
9 shall be removed by the governor for reasonable cause, after due notice and full
10 hearing, on the address of two-thirds of the senate.

Amend by adding after the words "public instruction" on line 5 the words *and municipal officers whose term is fixed by statute.*

The CHAIRMAN. Unless there is objection, in order to make this section harmonize with what we have already done, the words "superintendent of public instruction" will be changed to "commissioner of education." That will be noted by the secretary, because it is merely a matter of style. This amendment is suggested by Mr. Chrostwaite, by adding certain words. Is a motion made by any member of the committee to adopt this suggested amendment? As the chair understands this amendment, it provides that municipal officers whose term is fixed by statute may be removed by the power that appointed them.

Mr. GORDON. Mr. Chairman: I do not know whether that is municipal home rule or not. By his title here, it might be. This is removing home rule from the various municipal subdivisions and giving the authority to the state powers to remove elective officers, is it not? Does it not give them power?

The CHAIRMAN. This applies only to appointive officers.

Mr. GORDON. Mr. Chairman: Might I inquire of the chair what change this makes?

The CHAIRMAN. My understanding is that it would give the power to remove police officers, and so on, in municipalities by the power that appointed them. It seems to me that it is a matter of legislation rather than of constitutional enactment.

Mr. GORDON. Mr. Chairman: I hope that this amendment will not prevail. These officers now have the right of trial and charges must be made against them.

Mr. FISHER. Mr. Chairman: My understanding is just the reverse. My understanding is that this amendment will except a municipal officer whose term is fixed by law. "Appointed officers, other than judges of the courts of record and the superintendent of public instruction and municipal officers whose terms are fixed by statute,

may be removed." This makes municipal officers with a fixed tenure one of the classes of officers who cannot be removed, and that is the purpose of the amendment.

The CHAIRMAN. I think you are right about that.

Mr. GORDON. Mr. Chairman: I do not know how far-reaching it will be. Let me say a word upon the reason of the general provision of the existing constitution, and the continuance of it in this, that appointive officers may be removed by the power that appoints them. The idea was to fix responsibility and to give to the department head or the other officer who appoints subordinates the right to remove the subordinate when, in the judgment of the appointing power, he is not serving the public properly, so that he might not have a term which he gets by appointment and holds against the pleasure of the appointing power. That is a wise provision. It is necessary in order that the executive administration may be conducted satisfactorily and efficiently; otherwise an executive officer would find himself surrounded by persons who had been appointed who were not carrying out his will, or probably who were conspiring against him and against his efficiency, and yet he would not have the power to remove them. I think that is a common condition which at present exists, that all appointive officers may be removed by the power that appoints them, irrespective of their term.

The CHAIRMAN. Unless there is a motion to adopt the amendment, the amendment will fall.

The chair hears no motion, and the amendment falls.

The secretary read the amendment submitted by the chair, as follows:

Amend by striking out from line 5 the words [superintendent of public instruction] and inserting in lieu thereof the words *commissioner of education.*

This amendment was not called up.

The secretary read the amendment submitted in writing by Hon. Robert von Moschzisker, of Philadelphia, as follows:

Amend by striking out on lines 4 and 5 the words [judges of the courts of record].

Mr. CARSON. Mr. Chairman: I move the adoption of this amendment.

Mr. GORDON. Mr. Chairman: I would like to ask the gentleman why he moves it.

Mr. CARSON. Mr. Chairman: In the first place, judges art not appointed but are elected, and it might be possible they are appointed to fill a vacancy.

Mr. GORDON. Mr. Chairman: That is what it is intended to cover.

Mr. CARSON. Let me understand, Judge Gordon. Suppose a vacancy occurs in the office of judge prior to the general election so that he has to serve until that time, and the governor appoints, and the commission is filled out, and he takes the oath of office. Do you think the governor should have power under this to remove him?

Mr. GORDON. No; as it stands he has not the power, and Judge von Moschzisker wants to give him the power.

Mr. CARSON. Appointed officers may be removed at the pleasure of the power by which they shall have been appointed.

Mr. GORDON. They are judges of courts of record.

Mr. CARSON. Is it your reading that the justice's interpretation of that clause is to put judges within the sweeping of the scythe?

Mr. GORDON. That might be the effect.

Mr. CARSON. I do not think he intended that.

Mr. GORDON. I would like to ask the Chair if there is any doubt about that.

The CHAIRMAN. I am in agreement with your interpretation.

Mr. CARSON. Mr. Chairman: If it had not been for the distinguished name that suggested the amendment and his habit of thought in interpreting language, I would agree with you. I might possibly be partial, I do not know; I withdraw my motion.

The CHAIRMAN. The chair hears no motion to adopt the amendment, and therefore it will be dropped.

The secretary read the amendment submitted in writing by Civic Club of Allegheny County, Pittsburgh, Pa., and suggested also by H. K. Siebeneck, Esq., Pittsburgh, Pa., as follows:

Amend by striking out the last sentence and substituting therefor the following:

All officers elected by the people, except the governor, lieutenant governor and members of the general assembly may be removed by the governor for reasonable cause, on the address of two-thirds of the senate. The senate shall for this purpose appoint at each session a committee of its members whose terms do not expire until after the subsequent session, which committee shall include the lieutenant governor as chairman and eight senators, not more than six of whom shall be members of the same political party. Such committee shall have power to sit at all times, regardless of the duration of the session of the general assembly, and hear complaints in writing showing reasonable cause for the removal of any of the officers before mentioned, and, after due notice to the person complained of and a full and public hearing, shall submit its report to the next session of the senate immediately upon its organization; which report shall contain a positive or negative recommendation as to the removal of such officer. The general assembly shall by law fix the compensation of the members of such committee and of all necessary employes.

The CHAIRMAN. As the chair understands this proposed amendment, it gives the committee the power to remove officers.

Mr. REED. Mr. Chairman: Including all the judges.

The CHAIRMAN. Does any member of the committee move the adoption of this amendment?

The chair hears no motion to adopt the suggested amendment, and it will be dropped.

ARTICLE VIII. SECTION 1.

The committee of the whole proceeded to the consideration of section 1 of article VIII and suggested amendments.

The secretary read the section and amendment submitted to the chairman in writing at public hearings April 7, 1920, as follows:

Section 1. Qualifications of Electors.

1 Every citizen twenty-one years of age, possessing the following qualifications,
2 shall be entitled to vote at all elections, subject, however, to such laws requiring
3 and regulating the registration of electors as the general assembly may enact:
4 1. He shall have been a citizen of the United States at least one month.
5 2. He shall have resided in the state one year (or, having previously been a
6 qualified elector or native-born citizen of the state, he shall have removed there-
7 from and returned, then six months) immediately preceding the election.
8 3. He shall have resided in the election district where he shall offer to vote
9 at least sixty days [two months] immediately preceding the election.
10 4. [If twenty-two years of age and upwards, he shall have paid within two
11 years a state or county tax, which shall have been assessed at least two months
12 and paid at least one month before the election.]

Amend by adding at the end thereof a new clause as follows:

4a. *He shall not be under conviction or sentence of any court having jurisdiction, or undergoing punishment for any felony, or crime involving moral turpitude.*

Mr. THORPE. Mr. Chairman: May I rise to a matter of inquiry, whether any law at the present time disfranchises a man for misconduct while in office?

The CHAIRMAN. As the chair recalls it, there are laws which disfranchise men who violate the election law, but I do not recall that there are any other laws. It seems to the chair that it is a matter of legislation anyhow.

Mr. GORDON. Mr. Chairman: May I ask the chair what exigency calls for this?

The CHAIRMAN. I cannot recall where it came from. I have received a great many suggested amendments and passed them on to the secretary, and possibly this one among them. I have no recollection about it.

Mr. GORDON. Mr. Chairman: I can see no reason for it whatever, I can see no exigency. I would not speak positively, but I doubt very much whether a man under sentence can exercise the right of suffrage. I do not say who can be deprived of it, but he is in jail and theoretically he is continuously so unless released by *habeas corpus* for a particular purpose and he is taken to a particular place. I do not think the judges would grant writs of *habeas corpus* in order that prisoners may be taken out to vote.

The CHAIRMAN. The chair hears no motion to adopt the suggested amendment, and it is therefore dropped.

The secretary read the amendment submitted in writing by Hon. R. H. Koch, of Pottsville, Pa., and by the chairman, as follows:

Amend by striking out the word [he] wherever used in this section and substituting therefor the words *such citizen*.

Mr. KELLY. Mr. Chairman: I move the adoption of this amendment.

Mr. FISHER. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. PEPPER. Mr. Chairman: That really belongs to a great class of questions which will have to be disposed of by the committee on style. It will be remembered that the question of "he" or "she" was raised at an early stage of our deliberation, and we decided, I think, that wherever the language was significant in the constitution that would have been to be taken care of on a careful study of the whole. I do not see why we should not change it in this particular case.

On the question recurring,

Will the committee agree to the motion?

It was agreed to.

The secretary read the amendment suggested by George B. Gordon, Esq., of Pittsburgh, as follows:

Amend by inserting in paragraph 1, line 3, after the word "regulating" the words *elections and;* by inserting on line 4 after the word "electors" the words *not inconsistent herewith.*

Mr. REED. Mr. Chairman: I do not think that is necessary.

Mr. CARSON. Mr. Chairman: Why should that attract the attention of plasterers and cement finishers? I do not understand the origin of that.

Mr. REED. Mr. Chairman: I think it is well that it be considered. The first section reads "entitled to vote at all elections, subject, how-

ever, to much laws requiring and regulating the registration of electors as the general assembly may enact."

Mr. GORDON. Mr. Chairman: That first clause only gives the qualification, twenty-one years of age, and the following qualifications, that is, "shall be entitled to vote at all elections, subject, however, to such laws requiring and regulating the registration of electors as the general assembly may enact." I think this is correct, that is the qualification of voting, that first section only deals with the qualification of voting.

The CHAIRMAN. The chair hears no motion to adopt the suggested amendment, and it will therefore be dropped. .

The secretary read the amendment suggested by George B. Gordon, Esq., of Pittsburgh, as follows:

Amend further by inserting after the word "he" wherever it may occur the words *or she*.

Mr. CARSON. Mr. Chairman: We will have to be very careful about the use of the words "he" or "she." I recall the difficulty that a foreigner had in acquiring the English language. He said you might speak of he, his or him, but never of she, shis or shim.

The CHAIRMAN. Under Mr. Carson's suggestion this amendment will be dropped.

The secretary read the amendment suggested by George B. Gordon, Esq., of Pittsburgh, as follows:

Amend further by inserting as clause 1-a the following new clause:

1-a. *He or she shall have received either (1) the equivalent of a common school education and be able to speak, read and write the English language with facility, or (2) he or she shall be the owner of a freehold estate of the assessed value, for county purposes, of not less than one thousand dollars upon which no taxes are in default; and before he or she is registered in any election district, he or she shall produce to the registration officers a certificate as to said qualifications from the school board in which the election district is located if he or she elects to vote on a literacy qualification, or a certificate of the county assessors and treasurer if he or she elects to vote on a property qualification.*

Mr. CARSON. Mr. Chairman: Do you say that is Judge Gordon's suggestion?

The CHAIRMAN. No, sir; it is another kind of Gordon.

Mr. PEPPER. He is of the Episcopalian branch of the family.

The CHAIRMAN. Not hearing a motion to adopt this suggested amendment, it will be dropped.

The secretary read the amendment suggested by George B. Gordon, Esq., of Pittsburgh, as follows:

Amend further by inserting the words *two months* after the words "sixty days" on line 9.

Mr. REED. Mr. Chairman: The printer has inserted that already.

The CHAIRMAN. Is there any motion to adopt the suggested amendment? The chair hears no such motion.

Mr. REED. Mr. Chairman: Which way is the section now? The printer has it: "He shall have resided in the election district where he shall offer to vote at least sixty days (two months) immediately preceding the election."

The CHAIRMAN. It is sixty days in the preliminary draft and two months in the constitution of 1873.

There being no motion to adopt the suggested amendment, it will be dropped.

The secretary read the amendment suggested by George B. Gordon, Esq., of Pittsburg, as follows:

Amend further by adding as clause 3-a the following new clause:

3-a. No person who has been convicted of felony or adjudged to be a lunatic shall have the right to vote.

The CHAIRMAN. Does any member of the committee move the adoption of this suggested amendment?

The chair hears no motion to that effect, and this suggested amendment will be dropped.

The secretary read the protest by Alexander Urquhart, Secretary, Plasters and Cement Finishers, International Association, No. 8, Philadelphia, as follows

The clause in the above amendment providing that a voter "shall be the owner of a freehold estate" is protested against.

The CHAIRMAN. It seems that the clause in the amendment providing that a voter shall be the owner of a free hold estate is protested against by Mr. Carson's friend, Alexander Urquhart, Secretary of the Plasters and Cement Finishers, International Association.

Mr. CARSON. Mr. Chairman: No; I merely noticed that this printing in black-faced type was the only acknowledged sponsorship for these suggestions we have been receiving.

The CHAIRMAN. It is convenient to blame that on the printer.

Mr. CARSON. Mr. Chairman: He will probably be able to stand it, I do not know.

The CHAIRMAN. The chair hears no motion to adopt this suggested amendment, and it will be dropped.

The secretary read the amendment submitted in writing by the Chairman as follows:

Amend clause 3 by adding after the word "he" on line 1 thereof the words *or she.*

The CHAIRMAN. This suggested amendment has already been acted upon by the adoption of the word "citizen," so that will be dropped.

The secretary read the amendment submitted in writing by G. W. Williams, Esq., Pittsburg, Pa., and suggested also by Charles H. Ogden, of Pittsburgh, Pa., as folows:

Amend by inserting in the first paragraph on line 2 after the word "entitled" the words *and required to vote at all elections unless prevented therefrom by sickness or absence from the country.*

This amendment was not called up.

The secretary read the amendment submitttd by Dr. Francis Newton Thorpe, Commissioner, as follows:

Amend by retaining clause 4, as in the present constitution.

Mr. THORPE. Mr. Chairman: I move the adoption of this amendment.

Mr. FISHER. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. VOLL. Mr. Chairman: That means to reinsert the poll tax.

Mr. THORPE. Mr. Chairman: Yes.

Mr. GORDON. Mr. Chairman: I hope it will not prevail and that we will stand by what we have done.

Mr. VOLL. Mr. Chairman: I do, too.

Mr. PEPPER. Mr. Chairman: I share the views of the gentlemen who have just spoken. It seems to me this matter was very thoroughly discussed before, and as I recall it a very convincing exposition was made of the whole situation by Judge Gordon and Mr. Voll, and so far as I am concerned nothing has been said in our hearings which changes my mind.

On the question recurring,

Will the committee agree to the motion?

It was not agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE VIII, SECTION 4.

The committee of the whole proceeded to the consideration of section 4 of article VIII and suggested amendments.

The secretary read the section and amendment submitted in writing by the Civic Club of Allegheny County, Pittsburgh, Pa., as follows:

Section 4. Method of Conducting Elections.—Secrecy.

1 All elections by the citizens shall be by ballot or by such other method as may
2 be prescribed by law; provided, that secrecy in voting be preserved.

Amend by striking out the present section and inserting the following:

No elector shall be permitted to receive any assistance in marking his ballot or otherwise lawfully evidencing his vote, unless he shall first make affidavit that he cannot read the names on the ballot or other voting device, or that, by reason of physical disability, he is unable to mark his ballot or otherwise lawfully indicate his choice.

This amendment was not called up.

The secretary read the amendment submitted in writing by H. K. Siebeneck, Esq., of Pittsburgh, Pa., as follows:

Amend by adding at the end thereof the following:

If he offer to vote in a district where personal registration is requisite, he shall have resided sixty days in such district next prior to any primary election day.

Mr. VOLL. Mr. Chairman: May I inquire, if you will permit me, in section 4, page 58, at the bottom, is not that within the power of the legislature?

The CHAIRMAN. Yes that is a legislative provision, it seems to me, and not a constitutional provision.

Mr. REED. Mr. Chairman: If the chairman, as a pratical politician, thinks there is anything in it, I will move its adoption.

Mr. PEPPER. Mr. Chairman: I do not think in any event it could be adopted in the form proposed, because residence within sixty days prior to election day is made a qualification, which evidently is not the intention of the drafter.

The CHAIRMAN. It occurs to the chair, is not the whole subject of primary election a matter of legislation, and not of constitutional enactment?

The chair hears no motion to adopt the suggestion and the amendment will therefore be dropped.

The secretary read the amendment submitted by the American Proportional Representation League, C. G. Hoag, Secretary, as follows:

Amend by adding at the end thereof the following:

All elections of representatives in the general assembly shall be conducted by a system of proportional representation which shall guarantee to each united group

of electors in each representative district a representation as nearly as practicable in proportion to the number of votes it casts in that district.

Mr. VOLL. Mr. Chairman: I move that the amendment be adopted.

Mr. PEPPER. Mr. Chairman: I second the motion.

The motion was not agreed to.

ARTICLE VIII, SECTION 5.

The committee of the whole proceeded to the consideration of section 5 of article VIII and suggested amendment.

The secretary read the section and amendment submitted in writing by the chairman, as follows:

Section 5. Privileges of Electors.

1 Electors shall in all cases except treason, felony and breach or surety of the
2 peace, be privileged from arrest during their attendance on elections, and in
3 going to and returning therefrom.

Amend by striking out on line 1 the word [or] and inserting the word *of*.

The CHAIRMAN. This amendment, which is submitted by the Chair, is really a matter of style.

Mr. REED. Mr. Chairman: Can you explain it?

The CHAIRMAN. In the original constitution the word "or" should be "of." That is a matter of style. I suppose it might as well be adopted. It reads in the constitution of 1873 "breach or surety of the peace." It ought to be "breach of surety of the peace." A breach of the peace is one thing and surety of the peace is another thing in criminal law. I do not think it is important, it could be considered by the committee on style.

Mr. CARSON. Mr. Chairman: Ought it not be breach of the peace or surety"?

The CHAIRMAN. Breach of the peace, I think it ought to be. However, that matter can be taken care of by the committee on style. The suggested amendment will be dropped.

ARTICLE VIII, SECTION 7.

The committee of the whole proceeded to the consideration of section 7 of article VIII and suggested amendments.

The secretary read the section and amendment submitted in writing by C. G. Hoag, Secretary, American Proportional Representation League, as follows:

Section 7. Registration of Electors.—Uniformity of Election Laws.

1 All laws regulating the holding of elections by the citizens or for the regis-
2 tration of electors shall be uniform throughout the state, but laws regulating and
3 requiring the registration of electors may be enacted to apply to cities only; pro-
4 vided, that such laws be uniform for cities of the same class.

Amend by substituting for the last period a semicolon and by adding the following: *and the general assembly may prescribe proportional representation for the elections of any representative body in all municipalities of a given class or classes, or in every municipality of a given class or classes, which by vote of its electors approves proportional representation for those elections.*

Mr. FOX. Mr. Chairman: I move the adoption of the amendment.

Mr. PEPPER. Mr. Chairman: I second the motion.

On the question,

Will the Comittee agree to the motion?

Mr. FOX. Mr. Chairman: It does not seem to me to be well to try this experiment with the general assembly, but I am impressed

with the arguments that have been made in reference to proportional representation, and I think it would be well to give the general assembly power to pass an act of this kind.

Mr. PEPPER. Mr. Chairman: It seems to me that there is a very great deal of weight in the suggestion that in a democracy the representative assembly should be in its composition a reproduction, so far as possible, of the community which it represents. I think this system of proportional representation accomplishes the highly important purpose of giving in the leglislative assembly a division of sentiment fairly corresponding to the division that exists in the community. It makes it unlikely, perhaps even imposible, that there should at any time be elected to the assembly persons representing a group that happens to be the majority group in the community to the exclusion of those representing minority groups. I very much hope that at least the permissive authority given to the general assembly by the section under consideration will be approved by the commission.

The CHAIRMAN. The motion of Judge Fox, seconded by Mr. Pepper, is that the suggested section be adopted. If it is to be adopted, the chair would like to suggest that the words "which by vote of its electors approves proportional representation for those elections" be stricken out. If it is intended to confer on the legislature the power to prescribe this method of voting it ought not to be dependent, it seems to me, on the adoption of the method by the municipality. If the legislature is to have the power to prescribe that they can prescribe it and can make that the condition on which the legislature would grant the power, but the constitution ought not to limit it in that respect.

Mr. FOX. Mr. Chairman: With Mr. Pepper's consent, I am perfectly willing to strike out that phrase in the proposed amendment.

Mr. GORDON. Mr. Chairman: I think that is right. It seems to me the clause as it sands is correct and intended to allow the legislature to give proportional representation to all muncipalities of a given class, or confer it upon any single municipality which by vote may desire it. Those are two distinct ideas. The legislature might very well confer upon a whole class this power or it might give it to any one in that class that voted to have it, and not to the others. That is the purpose of it.

Mr. PEPPER. Mr. Chairman: That was my thought, sir, and for that reason only I should prefer not to accede to the suggestion made by the Chair.

The CHAIRMAN. The chair's thought about it is that you would have confussion worse confounded in municipal elections if the right to exercise the power of proportional voting is not conferred directly by the legislature. There are nine boroughs between my town and Philadelphia. Now, is each one of those nine boroughs to have a different method of electing borough officers and are the tickets all to be printed differently, and all that? You would have confusion worse confounded. As I understand Mr. Pepper's thought, it is to enable the legislature to try out this system of voting in municipalities. Now, you may do that by an act which would provide that all boroughs may elect in that way; that all cities will elect in that way. Then you will have one method of making up tickets and one method for the counting. But this method of proportional representation

takes quite a good deal of machinery in the counting. If this is to be arranged for differently in different municipalities, with nine hundred and fifty boroughs in the state, I do not see how it can be possibly worked out in the different counties. If the thought here is to give the legislature power to say that cities may use proportional representation or boroughs may, I can see how it would work out, but the other way I think it would be most confusing thing.

Mr. FISHER. Mr. Chairman: I move to amend by striking out the words after the word "classes" including the following: "or in every municipality of a given class or classes, which by vote of its electors approves proportional representation for those elections." I make that motion to bring the matter specifically before the commission.

Mr. REED. Mr. Chairman: I second the amendment.

On the question,

Will the committee agree to the amendment, to the amendment?

Mr. PEPPER. Mr. Chairman: If I understand the situation correctly it is this. The proposition is that the legislature may legislate on the subject of proportional representation, in the case of elections in municipal bodies. There are two classes of cases in which the legislature might be authorized to act, one is the case in which the legislature prescribes proportional representation in the elections to be held in all municipalities of a given class. If Senator Fisher's amendment prevails that is the only case which will be covered by the section if it ultimately passes. But the second case which is the case in which the general assembly does not prescribe proportional representation for an entire class of municipalities, but prescribes proportional representation for elections to be held in any municipality of any class where the voters of that municipality have signified to the legislature their desire to have proportional representation. It is that second case, as I understand it, that will be blotted out by the terms of Senator Fisher's resolution. Now, I may be slow in comprehending the force of what was said by the Chair, but as yet I do not see how confusion is going to be produced merely by allowing a municipality in the case of its own election for its own representative body to proceed by the method of proportional representation. The mere fact that there may be nine or nine hundred municipalities does not seem to me to be very material, because the fact that the municipal legislature in the case of one municipality is to be chosen by the method of proportional representation creates no confusion in the case of elections in the other municipalities where that system is not to be put in force. It seems to me that the completeness of the section is rather marred by the amendment. I am not able to see why, if the experiment is to be tried out at all, it should not be tried in both classes of cases, and not merely in one of them. Mr. Chairman, why should it not be proper for the general assembly to provide proportional representation for all municipalities of a given class, and why should it not also be proper for the general assembly to permit proportional representation in a specific municipality whose voters desire it? It seems to me that the section would be complete as it stands, and that the amendment would mar it.

The CHAIRMAN. It seems to the chair it would destroy uniformity of elections. You would have to create machinery to canvass each vote for a single municipality in a county, and it would be

entirely out of harmony with all the other election machinery of the country. It would be entirely out of harmony so far as the printing of tickets is concerned. The legislature might solve that problem, if it arose, in a satisfactory way. I do not know, but that is my thought. If the thing is to be tested it ought to be tested by the granting of power to the legislature to prescribe that proportional voting may be indulged in in the municipalities of the state.

Mr. FISHER. Mr. Chairman: It seems to me that the chair's thought on the subject is sound. If this were adopted it would be possible for a borough in one section of the state to come in and have its elections conducted by this method. Another, in another section of the state must not. A city might do it, a city of the second class or a city of the third class might do it. All this tends to confusion. We have provided for a great variety of classification. We have enlarged the power of the legislature to classify the municipalities, and now we increase confusion by allowing each municipality to adopt a method of holding elections. It is in the interest of uniformity that I would have this stricken out. County commissioners have the preparation of the ballot, and this would place an extreme burden on them and be a very material additional cost in providing for the carrying out of a variety of modes of conducting elections. I am not opposed to experimentation along this line, but it seems to me that when we do it it ought not to be made by the individual, but wait until the idea is strong enough to apply to some one of those numerous classes which we have provided in the constitution. It is purely in the matter of convenience and expense in the conducting of elections and the avoidance of confusion in the printing of the ballots that I raise objections.

Mr. VOLL. Mr. Chairman: Is it not a fact that other states grant certain privileges and powers to different municipalities, and that their election methods are different?

The CHAIRMAN. But they have different constitutions.

Mr. VOLL. Mr. Chairman: Could not a proviso be made now in this constitution in accordance with this amendment to allow the same thing under this constitution? I do not believe it interferes with their election machinery or adds any unnecessary expense.

The CHAIRMAN. Then I do not understand what Mr. Hoag meant here, because it certainly requires a board of accountants to sit and canvass this vote. Futhermore, there are a great many different kinds, I know there is more than one system of proportional representation. There is the Hare system, and there are other systems Now, if we are going to have in boroughs of the state, in the counties, one borough with the Hare system and another borough with another system, and the third borough with some other system, it seems to me we are going to get our elections laws in inextricable confusion instead of keeping them uniform. As I understand the purpose, it is that the legislature may have the power to provide that this system of electing may be used in a municipality. If that is the purpose then the legislature can prescribe that. It seems to me that to do away with the general system and to provide a variety of systems for the elections in the different municipal divisions of the state is going to lead to very great confusion.

Mr. VOLL. Mr. Chairman: May I inquire, suppose the legislature does not see fit to grant this power to municipalities that has been

given by the constitution, but the voters of one of the other municipalities throughout the state desire to have this form of election?

The CHAIRMAN: They could not get it under this amendment as drawn, as I view it.

Mr. GORDON. Mr. Chairman: The answer to the proposition that it would be an additional expense is that the voters if the particular borough or municipality that desires proportional representation have expressed their desire to go to the expense, and they ought to be allowed to spend the money if it is necessary for additional election machinery for conducting its elections. And next as to uniformity. Uniformity of elections is only desirable so far as it effects electoral rights. As to how the representative of a particular borough should elect in its legislative body its members surely is, if you chose, an idiosyncrasy which, if it does not violate republican government, if it does not deprive other citizens of the right to vote, if it does not discriminate, if it is intended to perfect republican government so that there shall be real representation of the entire community, is not a thing to be frowned upon; and the fact that only one borough in the state desired it would not destroy uniformity of election, and besides it is not a want of uniformity which produces complexities at all, for in that borough, where alone it would apply, every one would understand the nature of the election and there would be no complexity or confusion there, so that it seems to me on those two propositions the arguments rather halt.

The CHAIRMAN. May I suggest this? This would apply in my own town, where we vote on one ticket. That is the provision of the law and we have carried it now so that we vote the non-partisan ballot on the one ticket. Now, suppose this was to be prescribed by a vote of the people of Chester, and that is the only municipality in the state now, and the tickets that they vote are the general tickets. Now they are canvassed by the election officers, but under this system they will have to go to a big canvassing board and there be counted by the election officers, and then after the election officers have counted them can they keep them out of the ballot box and send them to the central board to be counted.

Mr. GORDON. Mr. Chairman: I answer, if it is a large subdivision, if it is a city of the second class there would be no difficulty in providing a board to perform its duty of counting according to the proportional representation system, and it will not interfere with anybody else. If it is a small borough it would be so simple it could be done in half an hour or an hour, so that I do not see how the argument as to convenience applies.

The CHAIRMAN. You would have to vote two tickets. The county officers would canvass in one way, and the city officers would canvass in another way.

Mr. GORDON. It is within the domain of the legislature; if it finds it impracticable, it does not have to do it. It is not obligatory, it permits the legislature to do it.

Mr. FISHER. Mr. Chairman: Suppose a municipality adopts this form of election, which prescribes here that it shall apply to any representative body. Now, that divides the elections in a municipality into two kinds. You would have this method apply to the representative body of the municipality, but it would not apply to any other elective office if you adopt this as written. So that in the election of a mayor, or burgess, or treasurer, or constable, or any other executive

officer, you would necessarily have your system of elections so made as to provide a dual system in such municipalities as might adopt this method.

Mr. GORDON. The balloting on one ballot for the officers for which there was only one incumbent the elections would proceed as now, and when it came down to vote for the legislative body the electorate would mark the candidates by first, second, third and fourth choice, all by one ballot, all by one election.

Mr. FISHER. Mr. Chairman: I am not certain whether that would be practical. I do not know whether it would be practicable to have two kinds of elections. We have here this mode for one class of officers and the mode in vogue at present for another class. As to the expense that would be incurred in preparing for these elections, that is borne by the county and not by the municipalities. The county commissioners look after the printing of the ballots and the county pays all expenses, so if an undue burden is placed upon anybody by the adoption of this mode, it is borne by the county at large and not by the municipality given to experimentation.

Mr. VOLL Mr. Chairman: It seems there are a number of examples set forth in this review that show it is practiable and has proven so.

The CHAIRMAN. My only thought would be it would lead to inextricable confusion in printing the ballots and counting the votes.

Mr. PEPPER. Mr. Chairman: What has been said is by way of criticism of the whole system of proportional representation, which is not really the question raised by the amendment. The amendment has to do with the single question of whether or not the legislature is to have the power to permit proportional representation in a single municipality or subdivision of the state whose voters have requested to be allowed to have it. Various things have been said as to the inconvenience and lack of uniformity that will result if that privilege is given to the voters in a particular municipality. Perhaps I am not sufficiently experienced in such matters to be impressed by the arguments of inconvenience that have been made. It does seem to me that where you are dealing with a new method of electing the members of the legislative assembly, there is a good deal to be said in favor of making it possible for the experiment to be tried out on the smallest scale. That will happen if this amendment is defeated and a single municipality is permitted the privilege of trying the experiment under legislative direction. It will not happen if the amendment prevails, because in that event you will not have proportional representation until the legislature has been led to prescribe it for an entire class of municipalities which, of course, it will not do unless all of that class of municipalities desire it. It seems to me that the passage of the amendment will go a long way in the direction of making it impracticable to try the experiment which we all agree ought to be tried on the basis of the experience of this system when it has been put into operation elsewhere.

On the question recurring,

Will the committee agree to the amendment to the amendment?

It was not agreed to.

On the question recurring,

Will the committee agree to the amendment?

Mr. STEVENS. Mr. Chairman: It seems to me that this is mat-

ter which may become very important, and while we have discussed various questions concerning expediency, we have not really gone into the meritorious discussion of this question. The hour of adjournment has long since passed, and it seems to me that we had better postpone further consideration of this until tomorrow morning, because without going into a full consideration of it I do not think it should be finally adopted. My mind at any rate would not be satisfied to see the amendment, even if it was only a permissive article, go into the constitution without being enlightened further.

COMMITTEE OF THE WHOLE RISES.

Mr. STEVENS. Mr. Chairman: I move the committee of the whole now rise and report progress.

Mr. REED. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, the committee of the whole rose and reported progress.

ADJOURNMENT.

Mr. STEVENS. Mr. Chairman: I move that the commission do now adjourn until 10 o'clock tomorrow morning.

Mr. REED. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 10.25 o'clock P. M., the commission adjourned until 10 o'clock tomorrow morning.

Senate Chamber,

Wednesday, May 12, 1920.

The Commission met at 10 o'clock A. M.

The Chairman, William I. Schaffer, in the chair.

The CHAIRMAN. The hour fixed for the meeting of the commission having arrived; the commission will be in order.

ROLL CALL.

The CHAIRMAN. The secretary will now call the roll.

The roll was called by the secretary and was as follows:

PRESENT 19.

Carson, English, Fisher, Fox, Gordon, Kelly, McCormick, Miller, Munce, Pepper, Pinchot, Reed, Smith, Stackpole, Stevens, Thorpe, Tyson, Voll, Schaffer (Chairman).

ABSENT—6.

Alter, Connelly, Cuyler, Perrine, Sulzberger, Warburton.

The CHAIRMAN. A quorum of the commission being present, the commission will proceed with its business.

JOURNAL APPROVED.

Mr. VOLL. Mr. Chairman: I move that the reading of the journal be dispensed with and the journal approved.

Mrs. MILLER. Mr. Chairman: I second the motion.

The motion was agreed to.

The CHAIRMAN. The chair wishes to make an announcement. I think if all the members who are present now can remain over to-morrow we can finish this week. I have been going over the suggested amendments, and I think we can finish and will not require a further session before the committee on style makes its report in the fall. I think it is important that we shall finish, because it does not seem to the chair that there can be a meeting very much before midsummer, and if we do not complete our work this week, between the national conventions, engagements of the members, and so forth, it will be very difficult to get a quorum here after this week. I therefore urge upon all members that they stay here until to-morrow in order that the work may be completed and the draft then go to the committee on style, and certainly it will save the members coming here for two weeks if we can do this, stay here to-morrow and put it through.

Mr. CARSON. Mr. Chairman: Does that mean that we will have three sessions to-day?

The CHAIRMAN. We will have three sessions to-day, a night session to-night and a session to-morrow, and I think we can get everything through. It may be essential possibly to refer some things to the committee on style for ironing out, but if we can arrange to stay here I think we can send everything to the committee on style in such shape that the committee will know what the true intent of the body is.

COMMITTEE OF THE WHOLE

The CHAIRMAN. Unless there is objection, the commission will now resolve itself into the committee of the whole for the purpose of taking up the calendar at the point where it was dropped last night.

The Commission then resolved itself into the committee of the whole, William I. Schaffer, Chairman.

ARTICLE VIII, SECTION 7.

The committee of the whole resumed consideration of section 7 of article VIII and suggested amendments.

The secretary read the section and amendment submitted in writing by C. G. Hoag, Secretary, American Proportional Representation League, as follows:

Section 7. Registration of Electors.—Uniformity of Election Laws.

1 All laws regulating the holding of elections by the citizens or for the regis-
2 tration of electors shall be uniform throughout the state, but laws regulating and
3 requiring the registration of electors may be enacted to apply to cities only;
4 provided, that such laws be uniform for cities of the same class.

Amend by substituting for the last period a semicolon and by adding the following: *and the general assembly may prescribe proportional representation for the elections of any representative body in all municipalities of a given class or classes, or in every municipality of a given class or classes, which by vote of its electors approves proportional representation for those elections.*

On the question recurring,

Will the Committee agree to the amendment?

Mr. PEPPER. Mr. Chairman: I very much hope that this resolution will prevail. I am satisfied that those of us who are firm believers, as I am, in our party system, makes a very grave mistake in supposing that we can insure the permanence and influence of the two great political parties by the process of suppressing the means of expression of other groups in a community. It is a way of sitting on the lid which seems to me to be unwise and unwholesome. The system of proportional representation does not tend to weaken our party system. It does tend to give expression to groups in a community which becomes sources of discontent and disturbance unless legitimate means of expression are found for them. Of course, if a man does not believe in universal suffrage, if a man does not believe in the principle of representation at all, he will be opposed to proportional representation; but if he really believes in universal suffarge, if he really believes in the principle of representative government, it seems to me that he will find it hard to escape the conclusion that that method of election is the best which causes the representative assembly to conform most closely in its composition to the make-up of the community which it represents. I do not believe, as I said a moment ago, that we can make a successful effort to strengthen the two great political parties by denying the right of expression to other groups. I cannot strengthen my heart and lungs by trying to suppress my liver. That is not the way nature works. We must come, it seems to me, to recognize that a great and growing source of discontent and disatisfaction in this country among the masses of the people is the impression, more or less well founded, that they are not represented in our constituent assemblies. That being the case, a system which gives them a legitimate method of expression without disturbing majority rule, seems to me to be the system that we ought to advocate. I repeat that it is only in the case of the exercise of the free will of the community in favor of this system that the legislature is bound to act, and it is only right that if the persons immediately concerned approve this system they should be entitled to try it. I am not able to see that the confusion will result which has been predicted. I realize the difficulty of a mechanical administration of this system, but after all those things can be magnified, when you wish to oppose the result, in a way out of all proportion to the real difficulties of the situation as we shall have to meet them, when the experiment is actually tried by those who want to make it succeed.. This thing is sound in principle. It is consistent with the Anglo-Saxon conception of making a representative assembly correspond in composition with the community it represents. It gives expression and opportunities of expression to those who otherwise feel themselves to be submerged, and unless I am greatly mistaken we shall sin against the light if we do not at this time make it possible in this great commonwealth to perfect our representative system in the way in which we shall perfect it if this provision prevails.

Mr. CARSON. Mr. Chairman: May I ask Mr. Pepper whether in the language of this suggestion as submitted he reads the word "may" in the first line as controlling; also a second group where there is a local request for the introduction of this system? In other words, the obligation is not laid on the legislature in either case. As

I understood Senator Fisher, he seemed to think that there was an obligation upon the legislature in case a borough or municipality of a certain class asked for its introduction. From what you have just said I fancy that you would say it is purely within the power of the legislature either to grant or deny, even if the borough expresses a preference for it.

Mr. PEPPER. Mr. Chairman: Yes; I think it is a permissive authority that is given to the legislature in both cases. I should be willing to go farther and make it mandatory upon the legislature in cases in which the municipality asked for it, but I really do not think that a proper construction of this section places upon the legislature a duty; it merely gives to the legislature permissive authority in the one case as well as in the other.

Mr. CARSON. Mr. Chairman: That is the way I understood Mr. Pepper. Now I would ask Senator Fisher whether he differs with Mr. Pepper in that construction.

Mr. FISHER. Mr. Chairman: I will say in answer to General Carson that I think as it is written it is not entirely clear whether the option in the second case rests with the legislature. It does not precisely express it that way. It is not entirely clear from the language.

Mr. CARSON. Mr. Chairman: My vote on this amendment of Senator Fisher will be largerly governed by that.

The CHAIRMAN. The amendment of Senator Fisher has been disposed of and lost; the vote now, as the Chair recalls the parliamentary situation, is on the main proposition.

Mr. PEPPER. Mr. Chairman: I so understand it, and I will call the attention of the Committee to the fact that the enacting words in this section are as follows: "The general assembly may prescribe proportional representation." Now, there is no language in the section which, as far as I can see, creates any other duty upon the legislature than that which is expressed in those words. The rest of the section differentiates the two cases, in either or both of which the general assembly may prescribe the system, but there is nothing in the section which modifies the language declaring that it is the optional action of the legislature that is contemplated.

Mr. ENGLISH. Mr. Chairman: I should like to ask Mr. Pepper whether there is anything in the present constitution which would prevent the general assembly from authorizing municipalities to conduct elections by this method. If there is nothing in the present constitution, it does not seem to me that there is any necessity for giving this permissive right to the legislature, giving it a right that it obviously has, it seems to me, under section 4, which says "All elections by the citizens shall be by ballot or such other method as may be prescribed by law." Now, unless there is something else in the constitution, it seems to me that there is no reason why the general assembly whenever it sees fit can do the very thing that we are now talking about.

Mr. PEPPER. Mr. Chairman: My answer is merely this: that the language just quoted by Mr. English refers, in my judgment, to the mechanics of choice rather than to the principle of representation, and I apprehend that, in the absence of a constitutional provision such as this, it is not only possible but probable that a court would hold that our present system of constituting a representative assembly is part of the law of the state by constitutional tradition

and could not be changed. I doubt very much whether we could get a decision favorable to this new and distinct method of applying a principle of representative government unless we had the backing of a constitutional prescription.

Mr. VOLL. Mr. Chairman: It seems to me that what Mr. Pepper has just stated here has been already acted upon by a judge in Michigan and been decided along the lines that he has suggested. Its proportional representation has been declared unconstitutional, in Kalamazoo, because it was not a matter of constitutional provision.

The CHAIRMAN. It occurs to the Chair, and he merely states it for information, that it did not take any constitutional amendment to enable, us to vote under the non-partisan system either for judges or for the election of councilmen or mayor in third class cities, and in the third-class cities act we not only voted on the non-partisan ballot, but we voted on the ballot that made the final result so that the total number of candidates to be selected had to be candidates at the general election. So that it would seem, so far as Pennsylvania is concerned, we have at least that light to guide us. Those things have actually been done and challenged to the court and stood the test.

Mr. STEVENS. Mr. Chairman: I am reluctant to differ from Mr. Pepper, for whose opinion I have high regard, but it seems to me the position we are about to take, if we do take it, is not at all consistent. In the first place, we have, by a fair majority, decided not to adopt the system for the state. In the next place, it has been the policy of this Commission, as I read in the records, not to make any experiments with the constitution, not to make any fundamental changes, unless the changes are called for, and are not either in the nature of legislation or experiments. Now, my learned friend frankly says that we should put this clause in in order to enable a subdivisio nof the government, a municipality, or a part of it, to experiment, and to experiment with what he calls a principle. It is idle for the academic mind to say that we are not interfering with the institution known as party government, which has been successfully giving us proper representation in our government, and it seems to me that the argument as to representation is based solely upon an expression of a community through its representatives, when the road value of a representative government is that it makes the government sound and not subject to change, that it insures deliberation in action, and that it is the anchor-sheet of democracy, and the elements as to the expression in a body representing nothing except unrest perhaps is absolutely non-essential and may be very harmful. But the point is that here we have an institution, an institution that has grown up, an institution that has been sound; and what are we doing? We are endeavoring to put in the constitution a change which we frankly say is in the nature of an experiment, and I protest against making any experiment in this constitution or declaring ourselves in favor of a principle for municipalities which we have eliminated when applied to the commonwealth, and I further say that we should not in the performance of our serious duties inject an experiment with a system which we have disapproved.

Mr. GORDON. Mr. Chairman: I am rather confused by the remarks of the last gentleman as to what constitutes representative democracy and the party system. It is not an experiment in this commonwealth to have representative government. It is not an experiment in this commonwealth to limit the elector voting for members

of the general assembly to vote for only a portion of the members to represent a particular district. The underlying principle of the election of the present general assembly is the underlying principle of proportional representation. When fifty senators, twenty-five senators, are to be elected all the electors do not vote for twenty-five senators, but each election in the senatorial district votes for one senator, and the composite is a representative body representing groups. It is that composite which constitutes the legislature, and every limit upon the right of an elector to vote the entire ballot for all persons to be elected is a step in the direction of representative government through groups of electors and not through the whole mass. Every conservative in this body ought to be in favor of proportional representation. If we are going to have a sheet-anchor in the futhure against the tyranny of mere majorities, it must be through something like proportional representation. If that be not so then the institutions which have such sanctity in the eyes of Judge Stevens will in that day of the tyranny of majorities have slight chance. But if we have a real representative democracy, in which all communities and all groups of men and opinions shall be represented, we will then have stability in our government, we will then have a government not subject to every gust of opinion or change of a majority, but we will have in the select body a voice for all, a voice for the conservative and for the radical, a voice for the absolute democracy and the representative democracy, a voice for every shade of political opinion; and that is what we ought to have and that is what the constitution of our government is. One of the offensive terms in pratical politics is the word "gerrymander." I do not know who was the author of that vicious system, but in our representative democracy we elect our Congress and our leglislators, we elect them in single districts so that each district, each locality of the state, should have a representative, not that a majority of the people of the entire state should govern the body, but that the candidates in the different groups should govern the body. And along came a political party which found its power slipping away, found itself with a majority of the whole vote, but not with such a majority in the representative body as enabled it to have its own will carried out recklessly and regardless of the public interest; then came the system of gerrymandering the state and making these districts so that the mere majority of the whole vote would command an overwhelming majority in the whole body.

The CHAIRMAN. That is majority rule.

Mr. GORDON. Mr. Chairman: I am very glad to have the paternity even of such a decadent child. And that was an attempt to destroy the elementary principle of democracy and the representative system of proportional representation. What Mr. Pepper said I think was extremely well said, and that is, that parties cannot hope to maintain their power by a reckless assertion of a mere majority vote; they can only maintain their power in the future, and our institutions will only have security, if all the people have an outlet for their opinion; and that is the buffer that representative democracy sets up against the waves of noisy anarchy. I was amazed when I sat here and heard the exposition of the proportional representative system by Mr. Hoag. It was so lucid, and he step by step

and showed by pratical demonstration how proportional representation was the constitution of a real democracy in which the lowliest had a voice, in which the radical was not repressed nor the conservative either, but in which the whole people had a voice adequately representative of their pratical and representative democracy. If we do not want a democracy, with its fluctuations and dangers in the trials of the moment, let us adopt this system at least in its experimental stage, for municipalities, and I assure Judge Stevens that nothing will happen to the sacred rights of party, whether they be sacred by gerrymander or by personal representation.

Mr. FISHER. Mr. Chairman: I took exception yesterday to the second provision of this amendment for the reason that it opened the door for special legislation. It breaks up the system of uniformity which we have adopted in this state through classification after many struggles. It cannot be denied that this amendment opens the door to a breaking up of the uniformity of the method of conducting an election for selecting the legislative bodies of municipalities, even in the same class of municipalities. Now, that may be a good thing. We have had one example, of an ex-member of the legislature, Mr. Scott, of Philadelphia, coming here, and after all the experiences of this state through many years of trials and tribulations with special laws, attempting to convince this Commission that special legislation is a good thing and that it will solve all the difficulties with which we have been contending. You will recall how plausibly he spoke on this subject. Now, there are some of us who cannot see the application of that sort of a remedy. We do not believe that special provisions should be enacted to cover special subjects. We want, as far as possible, to maintain the elasticity of the general system, to provide laws that will be general in their application. So strongly were the framers of the present Constitution imbued with that idea that they put into the present Constitution a provision for the uniformity of the elections. You have approved their work. Now you seek to do something if you adopt this amendment in its present form, that absolutely collides with the idea of uniformity in the conduct of elections. Perhaps this is a criticism as to the superficiality of the methods proposed here. Mr. Pepper has spoken of the merits of this provision, as has Judge Gordon, with great plausibility. They appeal strongly to one's sense of the right of representation which every citizen has in a legislative body. Mr. Pepper even went so far, and I think he went a little beyond his own notion in expressing it, when he intimated that unless one supported this provision his belief in universality of the franchise should be questioned. Have we lived all these years under our form of government, have we been asserting our belief of the right of suffarage, to waken up at this late moment to find that we are not the apostles of a democracy because we have not had a provision of that kind in our fundamental law? I think not. We have representative government. We seek in many ways to secure representative government. We do it by liberal provisions of the election law enabling any groups who want to advocate some political idea or thought to get on the ballot with, a very small percentage of the electors at their back. They can get on the general election ballot, they can organize for the primary election. They have full, free opportunity of expression under our law in that respect. And then we have representative government in another

way; we seek to break up our commonwealth into small election units so that those small units express the idea of smaller groups, and in that way we break up the dominance of what might be the rule of the autocracy, as Judge Gordon says, of majority rule. We can all recall how the pendulum swings one way or the other, even in this state, which is supposed to be the dominant Republican state of the Union. Many times we have seen the assertion of independence which has resulted in the election of members of the minority party, and there has been representative government and the minority has had the full and free right of expression.

Now, this is not what it appears to be on the surface, a desire for representative government. It is a desire, on the part of a small minority, or a small class, to secure representation when they could not otherwise secure it. There can only be such representation in a representative body of the electors in a given municipality as is expressive of a certain thought that is made in the issue. I believe enough in the rule of the majority to believe that they should control policy in a representative body. There is nearly always minority representation in such a body secured by present methods. The trouble is that there are small groups who have some unique idea to advance and they cannot marshal enough strength to organize a party or to get on the ballot and by this device they can be represented. It is simply a denial to the larger bodies of electors of so much representation as they seek to secure by this device. It seems to me in that sense it is not even representation. There is no special merit in having every shade of thought expressed in the legislative body. It is a short view back to the scenes that ushered in the great war. There is not one of us here who does not recall that a foreign power that become our deadly enemy set up a system of propaganda in this country to elect members to our Congress. With this scheme under discussion in vogue in the United States, the German Kaiser could have been represented in the halls of Congress by a great number of members. Now, is that such an alluring prospect? There is often safety in majority rule, and I maintain that I cannot see that the proposition here is going to solve all problems; that is going to be a cure for all radicalism; that, because a man is hostile to his country, as were many in the recent years, that it is going to benefit our government to permit him to introduce the virus of disloyalty into a representative body. As this is drawn I cannot support it. I would be willing to experiment to a certain degree with the first portion of it, but I cannot give the measure as it stands now my support.

Mr. VOLL. Mr. Chairman: I cannot quite understand Senator Fisher and Judge Stevens in their opposition to this suggested amendment to the constitution. Senator Fisher says it is a conception of some unique idea. So was the federal constitution when it was framed by the men who thought it was necessary to put unique ideas into form and practice at that time. We know that Germany has taught, or did teach it until the time of the war, that our constitutional form of government was a failure, that it was not based upon sound principle and practice. We do not know how soon the majorities of this country may change, when the trend of thought and mind may differ from what it is at the present time, and, as Judge Gordon has well said, we will be safeguarding ourselves if we have

a good sheet-anchor in a strong minority in the house of representatives or in the legislature in our government throughout the different states. Our government was an experiment and it was predicted at the time it was founded that it could not stand, but it is here for a centuray and a half, and I believe that our flag is the oldest in existence to-day. It is certain that the legislature would not prescribe this system of proportional representation as a whole for the state government, but it seems to me that there is a great deal of forethought and wisdom being used on the part of the representatives in this commission here in prescribing the methods and the means whereby the experiment may be tried out carefully and in a small community so that the people can learn by progressive steps as to its soundness and its praticability.

Mr. PEPPER. Mr. Chairman: May I assure Senator Fisher, through you, that he misunderstood something that I said, no doubt through the fact that I expressed myself badly. I never meant to say, and I do not think I did say, that those who were opposed to the section I was debating were not believers in true democracy and in universal suffrage. What I did mean to say was that if a man is opposed to the principle of universal suffrage and of representative government he is, of course, opposed to this particular proposition. In other words, I, of course, recognize that opposition to this measure could come from those who are just as strong believers in representative government and universal suffrage as I am. All that I say is that among those who are opposed to this thing you will find many whose real basis of opposition is scepticism about universal suffrage and disbelief in real representative government. And as I take my seat I should like to say two other things in regard to this observation of Senator Fisher: First, that the provision for uniformity in elections refers, as I understand it, to uniform methods of choosing those who are to sit in any given assembly. It cannot be that members of the legislature shall be differently chosen in accordance with different principles in different parts of the state, but uniformity in that sense is maintained if in the case of the legislative body of any given municipality all those who take their seats in that body are selected according to the same method, and this is that method. And secondly when he challenges us to express ourselves as to our views in an extreme case that he has suggested, the case in which as the result of foreign propaganda there are set at work in our midst forces tending to the disintegration of the republic, and asks us to express ourselves as to whether it is not a terrible thing to contemplate that those forces should find themselves represented in the general assembly of our communities, my answer is that if we are to have elements of that sort working at our vitals, I for one would rather have them express themselves through the organs of government and in such a way that they can be placed on record and their propaganda met, than I should have them working below the surface in ways where they cannot be detected and without the responsibility that comes from official expression.

Mr. REED. Mr. Chairman: I suppose this is a sort of a fight that anybody can get into, and I would move to amend by striking out the latter clause.

The CHAIRMAN. That amendment has already been voted on, and voted down last night.

Mr. REED. Mr. Chairman: I move it again after this discussion.

Mr. FOX. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. REED. Mr. Chairman: I would strike out the words "or in every municipality of a given class or classes, which by vote of its electors approves proportional representation for those elections."

The CHAIRMAN. That amendment has already been voted, and the chair rules that the amendment is not in order.

Mr. FISHER. Mr. Chairman: May I make the suggestion to Judge Reed, I appologize for making the suggestion to him, that his motion should be for a reconsideration of the vote whereby the amendment was defeated?

Mr. PEPPER. Mr. Chairman: We are in committee of the whole, and as I understand it Judge Reed was in order, because without a formal motion to reconsider we can bring up the question in committee of the whole.

The CHAIRMAN. The chair will reverse itself, and the motion is in order. The question recurs on Judge Reed's motion, seconded by Judge Fox, to amend by striking out the last clause beginning with the word "or."

On the question recurring

Will the Committee agree to the amendment?

It was agreed to.

The CHAIRMAN. The question recurs on the amendment suggested by Mr. Hoag.

On the question recurring,

Will the Committee agree to the motion?

Mr. THORPE. Mr. Chairman: Before we vote on this there is a matter which, if it has not occurred to the members, will occur to them promptly. It is rather curious that the two most eminent politicians and founders of our state were opposed to this proposition, that is, both Hamilton and Jefferson. Now, I do not say this to throw cold water on an admirable proposition, but to recall to the memories of my colleagues a condition of thought in which our government was founded. I say this because I shall ask Mr. Pepper a question. When Jefferson was inaugurated he uses the phrase "the sacred rights of majorities," and in a later number of the Federalist, I think it is 1788, my memory may be wrong, Hamilton speaks of the disadvantages of proportional representation. It is the only discussion, if my memory is correct, which he ever made in which he makes the argument, if it be an argument, that particular classes in a community are not adequate judges of the great wants of the whole community, and therefore that those who are chosen to office must be capable to be judges of the total wants of a community and of that particular group, who if they were successful in the minority vote should elect a minority representation. It would seem then that since 1800 or 1803, or some such period, our views of government have greatly changed. Mr. Chairman, it seems to me that the crux of this whole matter is economic if republican or representative government is worth saving and worth having and worth securing. Does this system do it? Has the country so changed since it was founded that we cannot depend upon the great founders' thoughts in primary procedure, and must we add to it a mechanical device to

secure what they secured by direct majority? It seems to me, talking about whether it would be difficult to print two separate ballots or whether there should be a variety in the election procedure does not touch the question. The great question is, is government made more secure by this representative system than it was one hundred and forty-odd years ago, made secure by the system then in vogue and supported by those two eminent American statesmen who took such opposite views of our fundamental principles. I therefore ask Mr. Pepper the question whether our country has so changed that we cannot expect to go on under the old principle but that we must modify what Madison so frequently called mechanics of government in order to secure the inheritance of which we are so proud.

Mr. PEPPER. Mr. Chairman: My answer is that the struggle which drew from Hamilton and Jefferson the sentence which has been quoted was a struggle between two sets of ideas for which those men respectively stood. The problem which gave rise to proportional representation was not a problem that was present in their day or in their minds. You were for the Hamilton type of thought or you were for the Jefferson type of thought. Everybody in the country was adequately represented either by the Hamilton group or by the Jefferson group. The utterances of each of those great statesmen are to be interpreted merely as meaning that when the Federalists were in control it was the sacred rights of that majority to frame government upon federalistic principles, and when the Jeffersonians were in control the same sacred rights of a majority insured the triumph of Jeffersonian principles. The problem which we are facing today is a problem that results from a system and state of affairs wholely different from anything which they were called upon to contemplate. The problem today is what are we to do for those groups in a community who did not conceive of themselves as adequately represented either by Hamilton or Jefferson. To quote the utterances of those men in dealing with a problem different from the one which we are facing is not, it seems to me, to shed light upon our difficulty.

The CHAIRMAN. May I ask Mr. Pepper something? Would you apply this system nation-wide? If the principle is sound it should be applied, it seems to me, nation-wide.

Mr. PEPPER. Mr. Chairman: That is the logical conclusion; and if I were to trust what I am pleased to call my intellect to that extent, I should have the courage of my convictions; but I have not the confidence in my capacity to think and to forecast the future which would lead me to take such a step as that in advance of an experiment on a more modest scale. I am now advocating permission to the legislature in this commonwealth to try an experiment which, if I must commit myself, I do regard as suitable in principle for every representative body in the country; but I may be wrong in that. The way to find out whether I am right or wrong is to try the experiment a scale where its failure would have no such momentous consequence as would ensue if an unsuccessful experiment were tried on a large scale; but unless we try the experiment, sir, unless we make a beginning, sir, we shall never be able to improve the system under which we are working, and I think there are very few of us who are willing to assert that we are working under a system that cannot be improved.

Mr. FOX. Mr. Chairman: I just now voted for the amendment of Judge Reed. I voted for that amendment because the very forceful argument which Senator Fisher made last evening persuaded me that this clause is objectionable as it will make legislation of a special character. The majority of the commission, however, have determined otherwise, and I accept their determination and I propose to vote for the proposition that is now pending, and I vote for that because I think we are providing a Constitution that will probably be in force for a period of at least fifty years, if we may judge by the past history of the commonwealth. I think we ought to afford an opportunity to try this experiment if in other jurisdictions it is found to be a suitable thing. I also agree with Mr. Pepper in his reading of this proposition as submitted by Mr. Hoag, and feeling as I do that the legislature will only enact the law if there is a popular demand for it, I think we are not taking a very serious step when we simply give permission to the legislature to adopt this if they see fit in their wisdom to do so. Nor do I agree with Judge Stevens that we are guilty of an inconsistency. We yesterday voted that we would not make this mandatory in Pennsylvania, and I think we were right then, but I also think that it would be the part of wisdom for us to look into the future and see perhaps the time may arise when the people of this state may demand that this experiment be tried and that we should provide the method by which it can be done.

Mr. THORPE. Mr. Chairman: Just a moment. Judge Fox expressed his opinion as to how he is going to vote, and what I have said was a matter of calling to the memory of my colleagues the ideas of Hamilton and Jefferson on this question. I am going to vote for Mr. Pepper's proposition because I think the country is in such a state that any reasonable experiment to serve the best interests of the country should be made, and we can start it in the commonwealth and if it proceeds to the nation by proving its excellence it will only confirm the wisdom of us who tried to do what we can to serve the Union.

The CHAIRMAN. I hope the time will come when South Carolina and Mississippi vote upon it, which, of course, they will proceed at once to do.

Mr. CARSON. Mr. Chairman: I did not intend to debate, but I want to explain. I was not here at the time Mr. Hoag expounded his system. I was visited by Mr. Hoag at my office and he spent about an hour in explaining it. My vote against the proposition submitted at the top of page 59, was based on the principle that that made it mandatory upon the legislature to provide for the method of the election of the general assembly according to this proportional system, and I thought that unwise. Then when this debate arose last night over this proposition it was emphasized by the amendment offered by Senator Fisher. My thought turned as to whether or not his amendment was based on the thought that if the legislature saw fit to withhold any legislation which would enable a community to put this into effect, the community itself could legislate against the wishes of the legislature and usurp legislative authority, and thereby introduced disturbance and disorder into the election methods of the state. Then when I asked Mr. Pepper for a construction of his article read as a whole, as to whether he thought it was still optional with the legislature and that it was not in that sense at the mercy

of some discordant view of a little community, in other words, whether the words "may prescribe" apply to the second portion of the paragraph as well as to the first; and as a matter of construction he said that he thought it did. I find Justice Fox concurs in that. I have read it carefully myself, and I concur, and therefore as long as this is left to the discretion of the legislature either to do or not to do it, I think it is wise to put into the Constitution the power, to be called upon if necessary, but not to be invoked if the wisdom of the legislative body sees fit to allow it to remain in suspense or in abeyance. I therefore shall vote for the amendment.

On the question recurring.

Will the committee agree to the motion?

It was agreed to.

The secretary read the amendment submitted in writing by A. Leo Weil, Esq., representing the Voters League, Pittsburgh, Pa., as follows:

Amend by adding after the word "electors" on line 3 the words *and regulating elections and the holding thereof.*

This amendment was not called up.

The secretary read the amendment submitted by the Chair at public hearing April 20, 1920, as follows:

Amend by inserting on line 3 after the word "cities" the words *and boroughs*, and by inserting on line 4 after the word "cities" the words *and boroughs.*

The CHAIRMAN. This amendment will be withdrawn.

On the motion,

Will the committee agree to the section as amendment?

It was agreed to.

ARTICLE VIII, SECTION 14.

The committee of the whole proceeded to the consideration of section 14 of article VIII, and suggested amendment.

The secretary read the section and amendment submitted in writing by the Legislative Reference Bureau, Harrisburg, Pa., and the Civic Club of Allegheny county, Pittsburgh, Pa., as follows:

Section 14. Election officers.

District election boards shall consist of a judge and two inspectors, who shall be chosen annually by the citizens. Each elector shall have the right to vote for the judge and one inspector, and each inspector shall appoint one clerk. The first election board for any new district shall be selected and vacancies in election boards filled, as shall be provided by law. Election officers shall be privileged from arrest upon days of election, and while engaged in making up and transmitting returns, except upon warrant of a court of record or judge thereof, for an election fraud, for felony, or for wanton breach of the peace. In cities they may claim exemption from jury duty during their terms of service.

Amend by substituting the word *biennially* for the word "annually" (second line).

Mr. CARSON. Mr. Chairman: I move that this amendment be referred to the committee on style.

Mr. FISHER. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. GORDON. Mr. Chairman: Is not that a matter of substance and not of style, whether election officers shall hold their offices for one or two years? I think it is of very considerable substance.

The CHAIRMAN. I think it is a matter of substance. I suppose what the Legislative Reference Bureau had in mind was to arrange that election officers should be elected at the municipal election and not at the general election, so that it would be in harmony with the system. I am not convinced about it myself, and I think if somebody had an opportunity to go into the question of law that is involved it would be well to do so.

Mr. GORDON. Mr. Chairman: It certainly is a question of substance.

The CHAIRMAN. I fully agree with you.

Mr. FISHER. Mr. Chairman: I will call your attention to the amendment which evidently changed our mode of election. We now elect officers every two years for municipal elections. This simply would make this provision harmonize with the amendment.

The CHAIRMAN. The motion is that it be referred to the committee on style.

Mr. CARSON. Mr. Chairman: I, of course, do not know what the powers of the committee on style are, but I have observed that whenever we get into difficulty we send it to the committee on style.

On the question recurring,

Will the Committee agree to the motion?

It was not agreed to.

Mr. FISHER. I move that the amendment be adopted.

Mr. REED. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE VIII, SECTION 15.

The committee of the whole proceeded to the consideration of section 15 of article VIII and suggested amendment.

The secretary read the section and amendment submitted in writing by the chairman as follows:

Section 15. Disqualifications for Election Officers.

1 No person shall be qualified to serve as an election officer who shall hold,
2 or shall within two months have held, any office, appointment or employment
3 in or under the government of the United States or of this state, or of any
4 city, or county, or of any municipal board, commission or trust in any city,
5 save only justices of the peace and aldermen, notaries public and persons in
6 the militia service of the state; nor shall any election officer be eligible to any
7 civil office to be filled at an election at which he shall serve, save only to such
8 subordinate municipal or local offices, below the grade of city or county offices,
9 as shall be designated by general law.

Amend by striking out on lines 5 and 6 the words [save only justices of the peace and aldermen].

The CHAIRMAN. This amendment was submitted by the Chair, to strike out the words "save only justices of the peace and aldermen." On giving some further thought to that, the Chair will withdraw it, and it can be called up for final consideration if we change the provisions of the constitution in such a way as to make that necessary. That was put in with the idea that it might be an essential thing on account of some other provision.

ARTICLE VIII, SECTION 16.

The committee of the whole proceeded to the consideration of section 16 of article VIII and suggested amendments.

The secretary read the section and amendment submitted in writing by the Civic Club of Allegheny county, Pittsburgh, Pa., and by H. K. Siebeneck, Esq., of Pittsburgh, Pa., as follows:

Section 16. Overseers of Elections.

1 The courts of common pleas of the several counties of the commonwealth
2 shall have power, within their respective jurisdictions, to appoint overseers of
3 election to supervise the proceedings of election officers and to make report
4 to the court as may be required; such appointments to be made for any district
5 in a city or county upon petition of five citizens, lawful voters of such election
6 district, setting forth that such appointment is a reasonable precaution to secure
7 the purity and fairness of elections; overseers shall be two in number for an
8 election district, shall be residents therein, and shall be persons qualified to
9 serve upon election boards, and in each case members of different political
10 parties; whenever the members of an election board shall differ in opinion the
11 overseers, if they shall be agreed thereon, shall decide the question of difference;
12 in appointing overseers of election all the law judges of the proper court, able
13 to act at the time, shall concur in the appointment made.

Amend by striking out in line 5 the words [lawful voters of such election district], and on line 8 the words [shall be residents therein].

Mr. FOX. Mr. Chairman: I move that the amendment be adopted.

Mr. PEPPER. Mr. Chairman: I second the motion.

The motion was agreed to.

The secretary read the amendment submitted in writing by the Chairman as follows:

Amend by striking out on line 5 the words [lawful voters of such election district], and by striking out on line 8 the word [shall be residents therein].

The CHAIRMAN. This amendment was submitted by the Chair, and as it is similar to the one just adopted, it will be dropped.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE VIII, SECTION 17-A (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 17-A of article VIII.

The secretary read the proposed new section submitted in writing by the Civic Club of Allegheny County, Pittsburgh, Pa., as follows:

Section 17-A (New).

The court of common pleas shall be open on election days and primary election days and shall have power to hear and decide summarily matters relating to the conduct of the election.

This amendment was not called up.

ARTICLE VIII, SECTION 17-B. (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 17-B of article VIII.

The secretary read the proposed new section submitted in writing by A. Leo Weil, Esq., representing the Voters League, Pittsburgh, Pa., as follows:

Section 17-B (New). Ballot Counting Board.

Add new section as follows:

At its first regular sessions after the adoption of this constitution the general assembly shall by law provide for the counting at one location in the municipality

of the ballots of all elections in the cities of this commonwealth, such counting to be made by a board to be known as the ballot counting board of such city, appointed for the purpose only; accommodations to be provided for the presence of the public while the ballots are being counted. Without counting or disturbing the ballots cast at any election in such city, the ballot boxes, immediately after the closing of the election, shall be so closed that no additional ballots can be placed therein and removed, together with the tallies and other reports of the election officers, to the place where the ballots are to be counted by the ballot counting board. The method of procedure to be regulated by law.

Mr. PEPPER. Mr. Chairman: I would like to ask the Chair as a practical proposition whether there is not a good deal to be said in favor of such a central counting of ballots as distinct from the counting in precincts where the ballots are deposited. If the only purpose is promptness and accuracy in the counting of the vote, I should think that centralization of the work would be more likely to insure both of those results than the present decentralized system.

The CHAIRMAN. I do not know which is the better system, Mr. Pepper; there may be advantage in both. It seems to me that is a matter purely for legislation, and if we put this hard and fast in the constitution, we might get the thing in such shape that it will not be an understandable proposition.

Mr. PEPPER. Mr. Chairman: There would be no doubt of the power of the legislature to do it in the absence of such provision.

The CHAIRMAN. I think not the slightest.

There is no motion to adopt the amendment, and the suggested amendment will be dropped.

ARTICLE IX, SECTION 1.

The committee of the whole proceeded to the consideration of section 1 of article IX and suggested amendments.

The secretary read the section and amendment submitted by the mayor, city solicitor, and city treasurer of Scranton, Pa., the Scranton Board of Trade, and the Scranton Surface Protective Association at public hearings April 7, 1920, as follows:

Section 1. Taxes to be Uniform.

1 All taxes shall be uniform, upon the same class of subjects, within the
2 territorial limits of the authority levying the tax, and shall be levied and
3 collected under general laws.

Amend by adding at the end thereof the following:

The general assembly, however, may provide for the levying and collecting of a tax on all anthracite coal in this commonwealth when prepared for market, and shall appropriate all or such portions of the said tax as may be necessary to the relief of any persons and municipalities injured or damaged by surface subsidence resulting from past or future mining of anthracite coal.

The CHAIRMAN. Is Judge Kelly in the room? I would not like to call this matter up in the absence of Judge Kelly. This is the mine-cave proposition.

Mr. FOX. Mr. Chairman: I had a talk with Judge Kelly this morning; he was here a few moments ago, and he said to me what seems to me quite obvious that perhaps we ought not to pass on this question until we have actually visited Scranton, as we propose to do. As he put it, it is like viewers going to view the land after they have decided on the question of damages, and I would therefore move that we postpone action on this matter until we have actually visited Scranton.

Mr. FISHER. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. PINCHOT. Mr. Chairman: May I ask as a matter of information in this connection? I had a letter from the Rotary Club of Scranton, asking for information as to when the commission is likely to be there. Have any plans been made?

The CHAIRMAN. Not that the Chair knows of: no, none.

On the question recurring,

Will the committee agree to the motion?

It was agreed to.

The secretary read the amendment submitted in writing by Charles B. Little, Esq., of Scranton, Pa., as follows:

Insert in the amendment offered above the word *hereafter* before the words "injured or damaged."

Mr. FOX. Mr. Chairman: I move that we postpone action on this amendment until after we have visited Scranton.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

The secretary read the amendment submitted by Hon. Francis Shunk Brown, of Philadelphia; Dr. Harlan Updegraff, of the University of Pennsylvania, Philadelphia, and the Educational conference of persons attending Schoolmen's Week, Philadelphia, April 20, 1920, as follows:

Amend by adding at the end thereof the following: *but the subjects for taxation may be classified for the purpose of laying graded or progressive taxes.*

Mr. PEPPER. Mr. Chairman: I move that the amendment be adopted.

Mr. PINCHOT. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. PEPPER. Mr. Chairman: You will remember that when the report of committee No. 4 was presented to this body it included a provision substantially similar to this one, the report being accompanied by the explanation that the provision was referred to the commission without recommendation. There was in fact a division of opinion in the committee. My recollection is that after considerable debate the provision was adopted and subsequently, on further consideration, a motion to strike out and to restore the section to the form in which it stands in the present constitution prevailed. Then came the public hearings and the submission of additional matter from persons outside of the Commission, and now we are face to face again with the question which we encountered when the report of the committee was submitted. I earnestly hope that the resolution now pending will be passed. It seems to me that we should be making a grave mistake, that we should be jeopradizing the acceptance of our draft by the people of this commonwealth, if we were to withhold from the legislature that power which seems to be essential in any well-ordered scheme of taxation, and that is the power to take into consideration the ability of the taxable to pay and the limited ability of different classes of taxable to pay. Unless this power is given to the legislature, it seems to me that our scheme of taxation will necessarily be imperfect, and to that extent inadequate.

Mr. REED. Mr. Chairman: I do not think it is inadequate. We have had a system of taxtation in this state for one hundred years, Dr. Thorpe can give the exact time, under which this state has prospered and grown rich. There never has been until within the last two or three years any demand that one man should be taxed more than another, and there is no demand for it to-day in this state except in the minds of a few people whose whole idea of progress is to change something that is in existence. Now fe are taxed, as Mr. Carson described at the meeting in February, and the taxation that a man of any property has to meet under the United States or Federal tax is such that lots of men do not dare to die in these days because their estates would be largely taken away under the system of taxation in the United States and the several states where they may happen to own stocks. There is a case that I imagine is true in which the unfortunate heirs of a man who happened to own stock in different states were called upon to pay one hundred and one per cent. in the shape of taxes. Now, why should this state, when there is no necessity for it, when we have, as the auditor general told us, plenty of ways in which to increase the revenues of the state if they are needed, why should we embark on this progressive system of taxation? We have not quite come to it, but I believe that when we do reach the amendment we ought to amend his provision by providing that the legislature should make reasonable exemption and minimum in the case of inheritance tax. I do not believe it is the right thing where a widow is left with a thousand or two thousand dollars that the state of Pennsylvania should reach down into that estate and take two or five per cent. away from her. There should be a minimum in that respect, and I suppose if necessity arose there might be a minimum in the case of income tax, but I do not think that is present with us today. The inheritance tax is present, everybody has to die some day, and his estate, if he has any, will be settled, and I believe there should be that minimum provided, and with that exception the provision as already passed by a large majority should be allowed to stand.

Mr. PINCHOT. Mr. Chairman. Just a word. I would like to say that in my opinion Mr. Pepper has expressed his judgment which should have the greatest weight with the members of this commission just now, as it very often does, to the effect that the judgment of the people of the state when the constitution is presented to them eventually is likely to be very largely grounded upon what we do in this particular instance. This provision would permit the legislature, not require, but permit the legislature, in its wisdom, to adopt the principle of equality of sacrifice to carry the burdens of the state instead of the principle of equality of contribution. The fair and right principle which is recognized around the world teaches that those who have most should have most required of them, and in taking for taxable purposes from the resources of the individual, that individual who has a surplus may rightly be expected to contribute more in proportion and percentage than the individual that has not. It seems to me that we have reached here the center of taxation, the very center of this new draft of a constitution, and I believe I should like to express my opinion that it is of the very utmost importance that this permissive right should be given to the legislature, not only

because it is just, that is the first consideration, but because without it I believe our work would be subject to very serious and proper re-consideration.

Mr. REED. Mr. Chairman: I am willing to stand for the people of this state on this provision as it stands, and I believe that the provision will be endorsed by a great majority of the people of the state when they come to consider it. Today we are groaning in this country under the enormous sur-tax, and the opinion is expressed pretty unanimously that something has to be done to relieve the business of the country from this terrific sur-tax and excess-profit tax, and by the time that this constitution comes before the people there will be a reaction, and in my judgment, if we undertake to depart from this provision as it has stood for fifty years, it will be very unpopular in the state. Of course, the ideas of the average reformer—I am not talking about Mr. Pinchot—but the average reformer is always finding some way of assessing a tax on someone. That is progressive, and that is reform; but I believe that the rank and file of the people of this state will be perfectly satisfied with the provision as it stands. I have heard no criticism of it since the draft went out.

Mr. FISHER. Mr. Chairman: I must confess again that I am without vision in some of my ideas, particularly on this subject of taxation. If I understand anything about taxation, the very fundamental idea of it is that it shall be levied equally upon persons and properly subject to taxation. That idea is just as old as taxation. If I have read the definition of taxes aright from textbooks and decisions of the court, that is the very elementary attribute of taxation. When you change that attribute you do not have taxation. Our minds revert to the great case of McCulloch *vs.* Maryland, in which Chief Justice Marshall made the famous expression that the power to tax is the power to destroy. Now, this is more than the power to tax, and the purpose of it, and let us be frank, is not to raise revenue by taxation, but to accomplish an economic purpose, which is the destruction of large estates. That is the purpose of it, and when we call it tax we camouflage. If we say here we want to introduce something that will break up the accumulation of large estates, let us adopt this. If we want taxes which are a uniform levy upon persons and property enforced by law for the payment of public charges, we should defeat the amendment. Well, this thing does not propose a tax, it is a misnomer. I can speak freely on this subject, because I do not have a great deal to be taxed. I am one of those fortunate persons who came into the world with nothing, and I have never accumulated much since; but it shocks my sense of justice that some man who by superior industry and the exercise of business ability has accumulated more money than I have, that I should say in the envy and jealousy of my heart that I am going to take a part of it away under the pretext of taxation; and that is what it is. Well now, if anybody wants to live under this system of taxation, let them do so; other commonwealths are enjoying it. Why they have it, Mr. Pepper, over in New York, and the strange thing about that is that there are a lot of people over in New York who are not satisfied with the benign institution of graduated taxation. They are coming to Pennsylvania to live, and we are getting a great many good citizens down around Philadelphia who ride back and forth to their places of busi-

ness in New York every day. I see them as I take the early train occasionally to go to New York. What for? To escape that very burden. And I have been told by the people in New York that many of the citizens of New York are moving out into other states in order that their estates may not be harrassed by the taxgatherer when they are laid away. I believe that every dollar should be taxed equally and fairly. If I have five hundred dollars I ought to pay the same rate on each dollar of my five hundred that some more fortunate man should pay if he has a million. Equality, fairness, that is the idea that has underlaid our system of taxation from the very foundation of our government. Now, what has made Pennsylvania a great state? We heard a significant statement during our public hearings from a gentlemen who came here to talk on the subject of advertising. He made the startling statement that ninety-two per cent. of the manufactured articles of Pennsylvania are consumed outside of our state. They are manufactured and exported, which would seem to indicate that we are the greatest manufacturing state in the Union. Why? Because by a liberal system of taxation, exempting manufacturing concerns from capital stock tax, we have given an invitation to all industries to come and locate in Pennsylvania. They have done it. Have we made money or lost money by it? We all know that the wealth brought into our state has wonderfully enriched us, and we never did a wiser thing economically than when we exempted manufacturing concerns from taxation. Now, these things have a bearing, and if we institute the system here of imposing a onerous gradnated tax on either incomes or estates, we are going to drive them away instead of keeping them here and inviting them here. I have no envy, the fact is I have more or less sympathy for the man with a very large estate who has to spend his life caring for his dollars; but let us treat them justly and fairly, and not introduce under a graduated system of taxation a provision which is intended to accomplish an economic purpose which we call it, the distribution of wealth.

Mr. GORDON. Mr. Chairman: I think it is rather a late day to advocate a system of taxation such as Senator Fisher seems to think the only equitable one, that is, in which the dollars of the rich, to use his expression, will be taxed as the dollars of the poor. That was once the theory of government, and it was once the theory to such an extent in fendal times that the dollars of the poor were taxed very much more than the dollars of the rich. But it has passed, and it has not passed in the storm of radicalism; it has passed in the deliberate vote of the citizens of the United States and by a constitutional amendment adopted after a decision of the supreme court. A graduated income tax is the law of the United States, and that was passed by three-fourths of the state. I believe that most economic thinkers, and I believe that most laymen, who are not technicians in that matter, recognize that the graduated income tax is the fairest of all taxes. It puts the burden of taxation upon him who can bear it best; it puts the burden of taxation upon property, where it should stand, and not upon individuals. Mr. Chairman, the theory of the principle that underlies that tax is a principle older than taxation, and is expressed in the parable which fell from the lips of the Master. The widow who dropped her mite into the box was said to have given more than all those who had put in much larger sums. That recog-

nized the fact that it is the extent of the income, the amount of the possessions, which determines the character of the contribution, and we have made it a part of the Federal law that the great incomes shall pay proportionately to their sizes. To Judge Reed, I may say in partial answer to his statement that there are some persons who think that good can only come by change, that there are certain others who believe that happiness can only exist by continuing the things as they are without change. Each man after his kind. Judge Reed said that there should be an exemption of very small estates and very small incomes. That is the bait which wealth always throws to the poor, and it has no meaning. The very rich man, to escape the progressive income tax and to save his large estate from taxation, very cleverly says, "Exempt the poor man's estate of a small amount." In return for that he would escape the burden of taxation which was apportioned according to possessions. Mr. Chairman, I do not know the purpose of this amendment, I cannot read it between the lines, but it obviously has in view some method by which there shall be a contribution to the expense of government commensurate with the property owned and protected by individuals who receive the benefits of government in return for taxation. Mr. Fisher says that it is intended to break up large estates. I do not know whether that is so or not, whether that it is the intention; if it is the intention, it is a purpose that I would look upon with perfect equanimity; more than that, it is a purpose which I would largely welcome. I do not think it is equitable to tax every man's dollar the same as every other man's, irrespective of the amount that he possesses. I think the widow's mite should not bear the same weight of taxation that the multi-millionaire's millions should bear. I therefore shall have to vote for this amendment, and trust that it will pass. It allows that discrimination in taxation which is the essence of justice in bearing the burdens of the state.

MR. FISHER IN THE CHAIR.

Mr. SCHAFFER. Mr. Chairman: It occurs to me that we are debating one thing and going to adopt another. It seems to me that the thing that everybody has had in mind who has discussed this proposition is an income tax. Now, an income tax is the kind of tax against which, the inequalities of it, opposition only burns deep in the mind of the man who pays the unequal taxes, but who cannot make public proclamation of the fact that he pays the unequal taxes because thereby he would have to make public the inmost secrets of his possessions, and that he will not do. This proposition is not limited to an income tax, but covers all and every form of property that is taxable. I recollect that I was down in North Carolina a number of years ago, and I happened to spend some weeks with one of the leading citizens of North Carolina, who said that on the farm adjoining his lived a colored man who was as good a citizen as the state of North Carolina possessed; and while he was a Democrat and the colored man a Republican, they invariably went to the polls together and voted, and if anybody had challenged the colored man's right to vote, he would have stepped into the breach and resented it with all the feeling that he possessed because of the colored man's high character and fine citizenship, and he sort of made himself a body

guard to see that no challenge was made of that man's right to vote. Now, it would be the man of thrift and it would be the man of possessions honestly acquired who would resent the levying of the proposed "tax the least." It would be the man of small means, the farmer who had a farm that was worth ten thousand dollars, who would against the proposition that he should be taxed a low rate and that the man adjoining him, who had a farm that was worth one hundred thousand dollars, should be taxed unduly and to a greater extent than he was taxed. That is where the resentment would come from. Why, under this proposition, drafted as it is, everything can be, in the language of the section, "classified for the purpose of laying graded or progressive taxes," and I say that is fundamentally and absolutely wrong under our system in Pennsylvania and under the all systems in the country. If I had the good fortune to live here on the river bank at Harrisburg, and happened to own a little house, and some other man lived next door to me who happened to own a great mansion, and they taxed the great mansion of the man who lived side by side with me at a figure higher than they taxed me, if I had any sense of the equality of things or of justice, I would protest against the higher tax levied on him. The thing in our government, it seems to me, that keeps us all of the same frame of mind, and all of the same interest, and all of the same feeling of equality, is that we know that every man-jack of us pays equal taxes on the property that we own save in the matter of income taxes; and if you destroy that you take a dangerous step, it seems to me, because then you do raise up classes; there will be the classes of the men who own fine farms and expensive homes and pay high taxes and the classes of the men who own small farms and inexpensive homes and pay small taxes. The thing that makes for equality in the common life of the state and of the nation is that, side by side and man for man, each man in the countryside pays the same road taxes levied on the same assessment, works them out if he pleases side by side with his neighbor and when it comes to assessment and levying of taxes each man is the equal of every other man before the law. I say, and I say it with sincerity, and with earnestness, that any system of taxation in this state which departs from the principle that taxes should be uniform upon all classes of property, where there is ability to pay, is absolutely wrong and absolutely un-American, and absolutely out of harmony with the spirit of our government and the conduct of our affairs. I do agree that some relief should be allowed in connection with an estate tax and with income tax, where the tax is a burden, where the possessions are small, and, as I say, I think the gentlemen have had in mind in this discussion solely the question of income tax and of estate tax. I say that on those two classes, inheritance tax and income tax, where the paying of the tax is a burden, exemption ought to be allowed. I drew an amendment, which is found on the bottom of page 65, which provides that "persons and property," following the word "exempt," may be exempted from taxation. Now, all of us lawyers know how unequal the burdens of taxation are when you come to apply the inheritance tax, if you grade it. We all know how unjust and how unequal the Federal government taxes are now operating upon estates. That is to say, an estate of one hundred thousand dollars which goes to twenty people, and each person gets

five thousand dollars out of it, would pay one rate of assessment, and an estate of five thousand dollars going to one person, the same amount would pay a lower rate of assessment; so that the beneficiaries of the two estates getting together and saying "I received a legacy of five thousand dollars and I had to pay five hundred dollars out of it," and another beneficiary receiving a legacy of five thousand dollars and saying "I had to pay ten dollars out of it," there is in the minds of those two people the feeling that the government in its exactions does not operate equally upon all.

Mr. GORDON. Mr. Attorney General: The tax is not upon the legacy; the tax is upon the estate, and has it not been so held?

Mr. SCHAFFER. It has been held that the tax is upon the estate, but I say it is an inequality.

Mr. GORDON. Suppose the taxpayer is at the point of death?

Mr. SCHAFFER. Mr. Chairman: I say that is an inequality as you find it in practical operation, and my objection to the income tax proposition—if this were limited to income tax, it might be another proposition, althought then I would not be in favor of it, because I believe that the just method of levying even an income tax is that every man who has the ability to pay, whether his income be ten thousand dollars or five thousand dollars a year or fifty thousand dollars a year, I believe that when he has the ability to pay every man ought to pay the same sum, and then I think that tax would be equal; but when he has not the ability to pay, and if the legislature should fix a sum that he is not able to pay, say it would be a burden at five thousand a year income, or three thousand dollars a year income, or a lower figure, that should be absolutely exempt. But every man who is able to pay ought to pay the same levy on the dollars that he possesses. It is not a matter of what his income is. It is a mistake to tax thrift in this country. It is a mistake to tax thrift anywhere, and one of the things that broke down the ancient governments was that they taxed thrift, with the result that there were no reservoirs of capital out of which money could be drawn for great undertakings. It is not true, it is not economically sound, it is not philosophically right, the men of thrift and men of enterprise should be penalized because they are men of thrift and men of enterprise. They are the useful men to civilization; they do not need the money; they cannot eat any more than any of us; they do not wear any more clothes or if they do they are foolish; they leave the clothes to be worn by the other sex in the family; but what they do is that, by thrift, by economy, by foresight and by forehandedness, either individually or in groups, they gather together money which can be used in enterprise, which can upbuild their undertakings, and which can be used to make other men happy and prosperous and start them on their careers; and any system, it seems to me, which would, in this state, this great industrial community, penalize thrift is a wrong system, and any system in this state that provides, as this amendment would provide, that universally, on all kinds of property, one man could be compelled to pay one amount of tax and another man could be compelled to pay another amount of tax because he owned a finer farm and a better house, makes class distinctions in the state which never ought to be brought about and never should be permitted to exist.

Mr. VOLL. Mr. Chairman: Just a word on this matter of taxation. I noted in this morning's paper that a very wealthy man of our country has stated that it is a crime to die rich. He is a well-known philanthropist, Mr. Nathan Straus, and he says that there is an old Jewish saying that it is gold to give when a man is healthy, that it is silver to give when a man is sick, that it is iron after he is dead. It seems to me that what the Chairman has just said about the basis of taxation is not well founded. The fruits of the earth, in accordance with Christian doctrine, as I understand it, are for all the people of the earth, and since Almighty God did not create us all alike and endow us all with the same talents, it is naturally to be expected that some men will obtain more of the fruits of the earth than others, and so it is that ninety per cent. of the people are doomed to be wage-earners all their lives in this country, and I suppose more in other countries. Those who have obtained more of the fruits of the earth than others are really stewarts of that fruit. And again if we take Christian doctrine into consideration, it states that no man is entitled to more than to keep himself and those who are dependent upon him in frugal comfort; and the proper way, it seems to me, to keep that equality within bounds and take the burden off those who are not able to pay is by graded taxation, which is progressive in its nature.

MR. SCHAFFER IN THE CHAIR.

Mr. McCORMICK. Mr. Chairman: May I ask for information, whether this amendment goes further than the United States laws on the same subject?

Mr. REED. Mr. Chairman: Yes, sir.

Mr. McCORMICK. Mr. Chairman: The law of the United States covers income tax alone.

Mr. REED. Mr. Chairman: The United States law does not provide for graded income tax as this would.

The CHAIRMAN. It would only cover income tax.

Mr. McCORMICK. Mr. Chairman: The constitution does cover it.

The CHAIRMAN. This is a constitutional amendment.

Mr. REED. Mr. Chairman: "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census of enumeration." That is the federal provision.

Mr. THORPE. Mr. Chairman: May I say a word or two on this? This term "equality" has a good deal of delusion, and I suppose that that the time will come when we are gone that the ideas presented to this Commission will get publicity and have their influence. We pass but our ideas survive, if we have any ideas. Mr. Chairman, the Judge has read this amendment. That amendment is one of the most dangerous, the most unfortunate amendment that was ever made in American history. It puts into the hands of the Congress a sovereign power which is unlike any power in the hands of Congress. Congress is made up of men and they are human beings moved by the passions of life, but their judgment is no better in many matters than your judgment and possibly mine, and when Mr. Elihu Root wrote that well-known letter to Governor Hughes expressing his approval of the principle, I think that this learned lawyer hit the nail on the head. It is true you will say, what is the use of talking about water

that has gone over the dam? The amendment has been added, but it is a very unfortunate amendment. It is an attack first upon that fundamental idea of democracy which is uniformity of justice; it is an attack upon that fundamental idea of state rights. Now, there is a difference between state sovereignty and state rights; but the states, Chief Justice Marshall tells us, were the organized form of the American people when our fundamental law was approved, and it could not have been approved any other way. Of course, nobody will dispute the dicta of the great chief justice, but the fundamental idea of democracy is uniformity of privilege. It would contribute to the peace of mankind if we did not know what fools we mortals are. Since we have intelligence enough to discriminate it has added greatly to the discomforts of the human race. Mr. Chairman, this idea of uniformity of taxation is fundamental in a democratic form of government. It is not in fundamental form, it was never fundamental, as the attorney general has said, in the old form. It is a discovery, if it be a discovery, of modern times, and we are building our theory of government upon that discovery. Mr. Chairman, shall we as citizens of Pennsylvania, passing through this short experience of contributing what we can contribute to some illustration of the principles of government in written form, shall we contribute to a principle which is contrary to the fundamental principle of government which we profess to believe in and to maintain? This amendment which Judge Reed read I know you will say is the law of the land. It is an unfortunate amendment, and shall we as the people of a great commonwealth go on record as approving the principle of the amendment? For my part I say no. I do not believe in that amendment because I believe it was a mistake.

Mr. Chairman, shall we as citizens of Pennsylvania contribute to the dominance of a practice which does not conform on close analysis to the fundamental cardinal ideas of American democracy? I think the attorney general has expressed it in a very persuasive way. In spite of what has been said, I think our reflections are somewhat moved by the curious and dangerous avidity of those who have not for that of those who have. Jealousy is instilled, it is putting a premium on jealousy and discrimination, a premium which is perilous in any form of government, and I do not care how rich a man will get he will be reviled. As I noticed, if you will allow a little illustration, coming in from California, I wrote to a number of friends concerning the University of California, which is a great university, asking if it suffers from political interference. The reply referred me to an amendment added to the constitution of California a few years ago, and said really the regulation of this matter is by public opinion. Now, after all that is the court of last resort, the court of public opinion. If you are going to contribute to that court by giving them jurisdiction to discriminate against wealth in any form, thrift and economy and uniformity, you are going to endanger the very institutions that you have solemnly sworn to support. I therefore, as a very humble member of this Commission, with our words probably going into print, for the use of posterity, I say I will vote against a proposition which in any way contributes to the vitality of a proposition which is dangerous to our institutions.

Mr. PEPPER. Mr. Chairman: I think it may conduce a little to clearness of thought if a statement is made as to the relative position in which this commonwealth still stands in the matter under discussion, and the position in which the United States stands in reference to the same matter. I am going to attempt such a statement, and if I err there are many on the floor who will correct me. I understand there is in the constitution of the United States no requirement of uniformity in taxation. I take it, therefore, that anything that Congress may tax at all it may tax by graded or progressive taxation. I doubt whether that statement will be challenged. Any subject of taxation which Congress may act upon at all it may act upon by way of a graded or progressive tax. The reason for the adoption of the amendment to the constitution of the United States in the case of the income tax was a reason which had nothing to do with the presence or absence of the element of uniformity. The necessity arose because the constitution of the United States provides that direct taxes must be apportioned among the states, and the supreme court had decided that the income tax to the extent it was derived from income issuing out of real estate or personalty was a direct tax and unconstitutional unless it was apportioned. Accordingly we adopted what Dr. Thorpe thinks was an inadvisable amendment to the constitution, but which seems to me to have been a proper one. We adopted an amendment by which we disassociated income from its source to the extent necessary to transfer the income tax into the great class of excise taxes and took it out of the class of property taxes. Having done that and made an income tax possible without apportioning it, it was not necessary to go further and give to Congress the power to grade it or make it progressive, because the power to grade or make progressive any tax that Congress levies is an inherent power of Congress and of the essence of the intelligent exercise of any taxing power. Now, when we come to Pennsylvania the situation is that we begin with a proposition that all taxes must be uniform. That is imbedded in the constitution. Therefore our position is different from that of the federal government in this respect, that while I suppose there is no doubt we would have a right without constitutional change to lay an income tax that was not graded or progressive but was uniform, we have not the right to lay an income tax that *is* graded or progressive because that would be an offense against the stereotyped uniformity which is imbedded in our constitution as it stands. Now, if we make operative the provision which is the subject of our debate we shall put the commonwealth of Pennsylvania, as I take it, upon precisely the same footing as the Federal government in the matter of the exercise of the taxing power. Both the legislature of Pennsylvania and the Congress of the United States will then have power to lay income taxes which are graded and income taxes which are progressive. Both the legislature of Pennsylvania and the Congress of the United States will have power in the case of any tax which they may lay to make that tax a graded or progressive tax. In other words, as I apprehend it, if the proposition under discussion becomes the law, the commonwealth of Pennsylvania as respects its taxing power will be precisely upon the footing which the Congress of the United States is on in respect to the taxing power of the Federal government. Therefore, the real question before us, it seems to me, is whether or not the people of the commonwealth of Pennsylvania

are going to trust the legislature in the matter of the exercise of the power to tax to the extent to which the people of the United States have trusted their Congress in the same sphere. I doubt whether I shall be suspected of advocating the penalizing of thrift. I have worked as hard as most men. What I have accumulated I have accumulated as the result of earning power. I do not like to pay a graded or progressive tax any better than any other man does, but I do not regard myself as the best judge of the taxes I ought to pay as my share of the burden of government. I often find in voluntary collections for charitable and religious purposes that the man whom I am approaching with a request for contribution has a very different impression from that which I have respecting his fare share of the fund which is being raised. I am not always satisfied that his judgment on that subject is the final judgment, although where it is a voluntary system of contribution one has to accept his judgment.

Mr. CARSON. Do you find it goes above or below your estimate of what he ought to give?

Mr. PEPPER. Rarely a man goes above it. Human nature, when it comes to parting with that which is one's own, is usually such that a man's estimate of his fair proportion is much lower than the estimate which is placed upon it by the onlooker. I doubt very much Mr. Chairman, whether it is fair for us to assume that an amendment of this kind is inspired by the desire of those who have not to take from those who have. I doubt whether the sentiment of jealousy or envy is an appreciable motive in a matter of this sort, and I am quite willing to admit that opposition to such a measure as this is not actuated by a selfish desire to hold back what a man recognizes as being his fair share.

Mr. CARSON. Mr. Chairman: Where would you draw the restraint? If they keep the tax within small percentages, it matters but little when they leap up to fifty per cent., fifty-five or sixty per cent., sixty-five per cent., it only makes a matter of about three years before you figure a man out of business. The United States government can by proceeding in three years on the collection of a sixty per cent. basis go right straight into a man's capital and utterly destroy it; there is nothing left of his estate, for his own private charity, his own channels of benevolence which he has been in the habit of distributing, are all choked up, because the government has commandeered his means, and he finally finds himself simply the victim of what rankles in his breast as an unjust power. In other words, you cannot trust these bodies with a rational exercise of their power without indulging in confiscatory legislation. It is not enough to say in this state a thing is constitutional either under police power or express power. Is it according to constitutional conscience to put into the Constitution the power to despoil a citizen or his children of what he has, simply on the theory that somehow or other in the inequalities of success and inequalities of opportunities he finds himself for the time being, you say, the trustee of a large amount of money and which he considers is legitimately his because it is the product of his own brain and his own enterprise, energy and intelligence, his own skill and cooperation? Kill them and the life of the state is destroyed.

Mr. PEPPER. Mr. Chairman: All I can say in answer to Mr. Carson is that the situation under which we are called upon to debate this matter is in effect a challenge to our calmness, to our intelligence, and to our farsightedness. It is true we are called upon to debate a sound principle at a moment when the public impression is that the power of taxation has been abused by the national legislature. I am not quite satisfied that that is really the fact, but I do not want to debate that because it is very hard for people who believe themselves to be hard hit to discuss rationally the question whether or not their impression is sound; but assuming that the Congress of the United States, under the pressure of extraordinary circumstances, has made an unwise use for the time being of the power of taxation confided to it by the people, is that a sufficient reason why we who are framing a document for fifty years' duration should not entrust to the legislature of this commonwealth the power of graded and progressive taxation, if that is a sound principle in taxation, notwithstanding that it has been abused? Now, I do not think that in the course of this debate the principle of progressive or graded taxation has been challenged except by indicating the ease with which that power can be abused. I admit that all taxing power could be abused, but the question is, Mr. Chairman, whether merely because we are living at a moment of excitement in this matter of high taxes, simply because there is a clamor from those who believe themselves hard hit, that the power of tax must be restrained and curbed. The question is whether merely because that is the fact at the moment we who are to look calmly upon the course of events for the coming fifty years are to be turned aside from taking a step which, it seems to me, reason dictates. The nature of the subject-matter demands a conformity to the system of taxation in force in the national government, unless the people of Pennsylvania are to trust their legislature less than the people of the United States trust their Congress.

Mr. ENGLISH. Mr. Chairman: I should like to ask Mr. Pepper if there is anything in this section that necessarily limits the progressive or graded tax to income tax?

Mr. PEPPER. Mr. Chairman: No. I said that if that section became law it would be true in Pennsylvania as it is already true in the United States that any subject which the legislature may tax at all it may tax by way of gradation or progression. That would be true in Pennsylvania after such a section became law as it is true in the Federal government today.

Mr. ENGLISH. Mr. Chairman: As I understand it, and I hesitate very much to question the accuracy of any statements made my the gentlemen from Philadelphia, the taxing power of Congress today, as far direct taxes are concerned, is limited to the imposition of income tax. This section, as I read it, would give to the legislature the power either through itself or its municipalities to graduate tax upon property without regard to income, and to that extent the legislature and its municipalities would undoubtedly have a much higher and entirely different taxing power than that which under the Federal Constitution may be exercised by the Federal Congress. Now, if this section would make it possible for a municipal council or the state legislature to tax a man who has ten thousand dollars worth of property at a higher rate than the man is taxed who has two thousand dollars worth of property, it seems to me that it is

anything but a progressive measure. We know that in our community life there has been a well-developed tendency in order to promote community progress to exempt from taxation improvements upon real estate. There is a school of political economy perhaps not headed, but made quite prominent by Henry George in his lifetime, which proceeds upon the theory that unimproved real estate is a detriment to a community, and therefore improvements upon real estate should be rewarded and encouraged by graded exemption from taxation. This principle is justified on the theory that without its practical application the community is not apt to progress. If that is so, and there is something to be said for it, I can understand how this section would defeat it. This section would discourage community progress in the cities where developments depend in a very large way upon the willingness of real estate owners to invest large sums of money in building and hotels and structures of that kind, and the imposition of a progressive tax which would increase step by step with the value of the property and its improvements would have a very discouraging effect upon the development of the community. It seems to me that not only would it tend to discourage the development of a community, but that it does violate the fundamental principle which justifies all taxation, and that is that a man should pay to support the government as nearly as possible in exact proportion to the benefits that he receives from its protection. The protection of life and of property does not increase always in proportion to the amount of property owned. A man might have twenty-five thousand dollars worth of property in a community and he may receive five times as much protection for it as does the man who owns five thousand dollars worth of property, but he does not receive ten times as much, and this principle of progressive taxation as applied to the *corpus* of a man's estate, it seems to me, does violate that principle.

Mr. McCORMICK. Mr. Chairman: Could not under this amendment the graduation be downward, the progression be downward?

Mr. REED. Mr. Chairman: Yes; but would it?

Mr. ENGLISH. Mr. Chairman: It might, but probably would not do it.

Mr. McCORMICK. Mr. Chairman: In other words, the single tax theory could be established under this amendment, the question of the single tax theory could be established today under our present constitution.

Mr. REED. Mr. Chairman: It is in Pittsburgh.

Mr. ENGLISH. Mr. Chairman: Yes; there is an act passed in 1907, if I am not mistaken, which practically applies the single tax theory to second class cities.

Mr. McCORMICK. Mr. Chairman: Under the present constitution, if you can progress down can you progress upwards under the present constitution?

Mr. ENGLISH. Mr. Chairman: I think that the justification under this section of the constitution for the act of 1907 was that the assessment of improvements was uniform, and therefore uniform as applied to all of the property in the same class, and that the assessment of the real estate was uniform although separately assessed. The situation would be entirely different from one which would be presented in the case I have in mind, where a man has five thousand dollars worth of property and pays on a basis of a two-mill tax and

where a man has twenty-five thousand dollars worth of property and perhaps would pay on the assessment basis of a ten-mill tax. That is the sort of a progressive tax basis that it seems to me is impossible under this section, and is iniquitious from every point of view, if I correctly understand it.

Mr. FISHER. Mr. Chairman: There is no question that under the present constitution any thing or any person or class of things and persons may be the subject of taxation. There is no restriction in that particular. The thing that is in our constitution at present is the uniformity of levy upon the property or the person taxed. It is upon that principle that the tax is laid. Now, in advocating the breaking up of uniform taxation Mr. Pepper has seen fit to refer to the constitution of the United States. Now, is that idea embodied in the constitution of the United States, and is that instrument to be a precedent? We all recall that the introduction into our federal constitution of the power of the federal states, to levy tax is one of the unique ideas in our system of government. It is said that our constitution was the first ever made in the federation of independent states that embodied the principle of the power of taxation in the federated government. If I recall, that idea was suggested by a Philadelphia merchant by the name of Webster, who wrote on this subject. His ideas were seized by three young men, all of them close to thirty or under, Mr. Pinckney, of South Carolina, Mr. Madison, of Virginia, and Mr. Hamilton, of New York. Those three young men undertook to make the framework of our government when the constitutional convention met, and all three of them incorporated in their drafts this idea of taxation. Now, that was resisted most strenously because our fathers believed that it was dangerous to put that power into the hands of a centralized government. They contended that the power of taxation had been the chief instrument of oppression in the hands of the governmental powers of the old country, and they revolted against the thought. It was admitted in the debates by those who advocated this power of taxation in and out of the convention that it was a dangerous thing to incorporate in the constitution. But it was recognized by wise men that it was the very life of the government and that it was necessary to put into our fundamental national law the power to tax if the government was to live and operate. Now is it true, as Mr. Pepper says, that the framers of the constitution disregarded the idea of equality? It is only necessary for us to turn to the article on that subject. It is in the first clause of section 8 of article I, and it is this: "The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States." The idea of uniformity did prevail and they did incorporate it into a constitutional provision. There is another expression on that point in the sixteenth amendment, covering what is known as the federal income tax.

Mr. GORDON. Mr. Chairman: That is territorial uniformity he has spoken of, and territorial only, taxes shall be uniform throughout the United States. It has nothing to do with this proposition.

Mr. FISHER. Mr. Chairman: But the point was raised here that the idea of equality or uniformity did not enter into the federal constitution. I say that this answers that, that it did enter into it; that it was a grave consideration with the framers of the constitution

and that the idea entered into the minds of those who invented the scheme of taxation which was incorporated into the Federal constitution. Our own state constitution is not unique in that uniformity is provided to protect the citizens against the abuse of the power of taxation. It is a very easy thing for me if I see a few of my neighbors oppressed with excessive taxation to smile and pass it by; but if I am the victim of the vicious system of taxation, that is a very different thing. If you maintain the idea of uniformity and apply it to all classes of citizens who are affected either in their persons or property you are not going to get very far with an inequitable, unjust and oppressive system of taxation.

Judge Gordon referred, as an example of the viciousness of taxation, to the time when the autocratic powers of the old country took everything they could grab from the poor under the form of taxation. They taxed everything. Why was that possible? It was possible because there was no instrument of government to protect the poor people against unequal taxation; and if you break down that safeguard of equality you open up the way to take, not of the rich alone, but, as Mr. McCormick has said, of the poor. I want to say that equality is for the protection of the poor and of all classes. If you break it down now, as is proposed, you open up a very dangerous field for injustice and oppression.

Mr. FOX. Mr. Chairman: I have been trying during the progress of the debate to satisfy my own mind as to the effect of this amendment, and I confess that as I study it it seems to me it may be very disastrous and give rise to a very great deal of uncertainty and litigation. "All taxes shall be uniform, upon the same class of subjects" is the first line of the section; "but the subject for taxation may be classified for the purpose of laying graded or progressive taxes," is the amendment. Now, those two clauses certainly cannot stand together, the one, the amendment, completely nullifies the first line of the section, and if those who are supporting this amendment really wish to accomplish what they are setting out to accomplish, it seems to me that the entire section ought to be redrafted, and in my view of it, it would create such confusion that we would be obliged to vote against the amendment now pending.

Mr. GORDON. Mr. Chairman: It seems to me those who have spoken upon the subject of uniformity of taxation have altogether missed the point as that word is used in the federal constitution and in the state constitution. Let me read the state constitution: "All taxes shall be uniform, upon the same classes of subjects, within the territorial limits of the authority levying the tax." It is uniformity within the territorial limits that is provided for both in the state constitution and in the United States constitution. That is to say, the county of Dauphin shall within its territory in levying its tax uniformally tax the same class of subjects elsewhere in the county of Dauphin, and the state of Pennsylvania in taxing any subjects which it shall classify shall throughout the entire state tax that subject everywhere the same. That is territorial uniformity that is provided for, so that the same class of property in one section of the state shall not pay less tax than the same class of property in another section of the state. That is the idea of uniformity here and in the federal constitution. Now, what does this proposed amendment say? First, let me read the general section again: "All taxes shall

be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax." "But the subjects for taxation may be classified for the purpose of laying graded or progressive taxes." That is to say there may be a classification of subjects which are to be progressively or gradedly taxed and they shall be classified, but the tax will be uniform, it will be everywhere the same, and those who are the owners of the subjects thus classified for the purpose of progressive tax will be alike all over the commonwealth There is not, therefore, destruction of uniformity. I observe the danger is not as great in the negative. Let me read again: "But the subjects for taxation may be classified for the purpose of laying graded or progressive taxes."

The CHAIRMAN. That is to say, if I buy a farm next to your farm and my farm cost me fifty thousand dollars and yours cost five thousand dollars the taxing authorities in Delaware county can tax me a higher figure than they tax you.

Mr. GORDON. Mr. Chairman: I do not think that would be classifying subjects at all. To classify a farm that cost five thousand dollars and one that cost fifty thousand dollars would not be classifying subjects at all.

The CHAIRMAN. We just do not agree on the legal proposition.

Mr. GORDON. But these subjects that are to be classified for the purpose of graded taxes—let me give you an illustration, which I suppose is in the mind of the drafter of this amendment, and I may be wholly in the dark as to it. I did not hear it presented and discussed, and this is the first I heard upon the subject. Let us suppose the situation in this way, as suggested in Mr. English's remarks: Let us suppose that unused land within municipalities were taxed on the unearned increment, which is the subject of taxation that is advocated, and I think justly advocated; suppose the unearned increment of unused land was made the subject of taxation and taxed progressively in a certain way, that would be uniform tax upon a certain class of subjects, and you may enlarge this further and say decedents estate are aimed at, and it is intended to break up large fortunes. Suppose it is; if that section passed, how would it proceed? There would be a tax of a certain amount upon decedents' estates of fifty thousand dollars, an increase of tax upon the next twenty-five thousand dollars, and the next twenty-five thousand dollars, and so on. What would be the effect? The subject which would be classified would be decedents' estates, but the classification might proceed even more definitely than that, and homesteads might be exempted, and only certain personalty in decedents' estates which might be made the subject of a graded income tax. How this would be carried out by the legislature without injustice I cannot see, but there is nothing in the criticism that is destruction of uniformity. It is not; but it enables the legislature for the purpose of levying graded income taxes to classify the subjects, put them in classes which may be made the subject of graded income tax. There is nothing unequal in that. I do not wish to be sophomoric, but I do not believe the gentlemen here have comprehended the modern idea of taxation; even our learned chairman in his address inveighed, and I think without well considering his words, upon the punishment of thrift, basing that upon the graded income tax as though that were punishment of thrift. Well now, Mr. Chairman and gentlemen, all

modern tax is levied not upon the individual, but it is levied upon property. It is levied upon property, property is the subject which is taxed everywhere, nationally, in states and counties and cities. It is property, and it is not property in the abstract that we tax; it is property in the possession of the individual.

The CHAIRMAN. Earnings.

Mr. GORDON. Mr. Chairman: Very well, that is property; earnings, income. But the point I am making is that it is not A, B, C, D, E and F, who are taxed, and therefore if A, B, C, D, E and F pay upon property which they have got in accordance with their possessions, that is not a discrimination against individuals, because that is the property which is levied upon and subject to tax, and I think in very few cases in the individual chargeable for tax, if he does not pay it, but only property may be proceeded against for the tax. Therefore, the modern idea that property shall be taxed and property only, and it shall be the increase or increment which shall be taxed, is the modern idea, is the equitable idea, is the idea which takes out of discrimination the individual person, be he black or white, be his religion what it may, and he is taxed in accordance with his possessions and ability to pay. It is not a punishment of thrift; on the contrary, it is carrying into practical operation the modern idea of taxing only property. Where would you be otherwise if that were not done? Let me say that is done, and they do tax dollar for dollar in every man's pocket just the same. I will put it in small figures for the purpose of carrying it in our minds. Let us suppose a state with one hundred thousand population, let us suppose the necessities of that government were a million dollars a year, would it be equitable to tax every person in that one hundred thousand ten dollars a year and thus raise the million? Not at all. Under modern economics would you think of doing such a thing? You would levy all taxes with exact uniformity and tax the property in the possession of the individuals in accordance with their ability to pay. Therefore, does the dollar in the poor man's pocket pay on the same basis as the dollar in the rich man's pocket, and the five in one of the same as five in the other, and that five in the pocket of the poor man as much as the five million in the other man's pocket? That is not modern taxation anywhere and it would be inexplicable, if it were so. Property is what is taxed, and I have been criticized for my reference to the constitutional amendment. The constitutional amendment was called for because an income tax could not be levied under the existing law; it could not be levied because it was not apportioned according to the population, and because of other constitutional provisions; but the people of the United States with that before them and knowing a graduated income tax was intended, amended their constitution with scarcely a dissenting vote in all the states of the union. If there was, it was only one of two scattered votes. Therefore, the people are in favor of this, and there is nothing incongruous with equality, there is nothing which discriminates between the rights of men, preferring one against the other, or punishes one for thrift and exempts another from property; on the contrary, it treats them all as the possessors of property, from which alone the taxes of the commonwealth can be derived, and levies the tax in accordance with their possessions, and in this case with the law of uniform classification of property for the purpose of levying graded taxes.

Mr. PINCHOT. Mr. Chairman: It happened a good many years ago. The question arose as to how the excess number of sheep in some national forest in the west should be cut down. It was found impossible to maintain the number that were there. Some of these bands of sheep were owned in small number by small men, and there were great numbers owned by large men. The proposition was made to us that we should uniformly cut them all down, take ten per cent. from each man's band, and the result, you will see at once, would have been to reduce the band out of which a number of these small men got their living, and which were necessary to support their families. My answer to that was, "No; we will cut down the number of the man that has more than he needs to support his family, out of proportion to the man who only has just enough." I make that illustration because it seems to me to go to the heart of the question that we have here before us. A poor man's income is nearly all of it essential for the welfare of himself and family; the rich man's income, the greater part of it, is not essential for himself and family; it is surplus. As long as men are unequally possessed of this world's goods you can make the taxation equal on the dollar at the expense of making it unequal on the man or you can make it equal on the man at the expense of making it unequal on the dollar. That choice is forced upon us, and there is not other choice, and we are called upon to decide here whether we shall adopt as a principle that the burden shall be unequal on the man in order to make it equal on the dollar, or the other way around; and that goes to the very heart of the whole question of government, and I repeat that in my belief, as Mr. Pepper says, it will go to the heart of the attitude of the manner in which this constitution is considered. I think we should consider with the utmost care before we decide to maintain or to refuse permission to lift the burden off of the man and put it on the dollar. There is no question at all in any man's mind as to what the sacrifice is or must be on the poor man or the small man. In taking the same amount from the dollar of each no one can maintain that the burden of the rich man is the same. If you do it, if you take five per cent. of his income as it is, you take five per cent. of the poor man's. The proposition is self-evident, and that is the question here, it seems to me, that we are concerned with. I believe there is no other single thing that we have met yet that so goes to the heart of our system of government as this. Mr. Pepper is right that this system permitted under the constitution of the United States, that there is nothing wrong or un-American in it. No one can maintain that so far as the burden on the individual is concerned, or the individual family is concerned, that the graded tax is unjust, and I think all must admit that a tax equal on the dollar, so long as there is disparity of possession among the people, must necessarily be unequal on the man.

Mr. CARSON. Mr. Chairman: Only one word. If we want to see where we are drifting, if you go down a few lines to the next suggestion, that assessments shall be uniform on the same class of subjects within the territorial limits of the authority levying the tax, mark these words: "and the rate shall be fixed in accordance with the need of the authority levying the tax." Think of it! No limit at all to hinder the tax-collector, or the widly extravagant ad-

ministration simply embarked under the guise of law on a general system of spoilation, that is all; "and the rate shall be fixed in accordance with the need of the authority levying the tax." Where are we going to drift to?

Mr. GORDON. Mr. Chairman: That is a most conservative clause.

Mr. VOLL. Mr. Chairman: That is not what we are voting on.

Mr. CARSON. Mr. Chairman: I know, but it is swinging open the door; then let us rush through. It would be an absolutely wild thing. Gentlemen would be shocked at the idea of having the members of the Commission start out on the highway to Philadelphia and stop a rich man's automobile and say, "Now stop, you surrender your purse, surrender your car and everything of that kind, because we would like to get home and we cannot afford to pay the Pennsylvania Railroad the rate of fare." We would be highway robbers. But we put ourselves, under guise of these general powers in the same position, without restraint of any kind to be exercised on the limit of the taxing power. There is a great deal in that that is deceptive. Talking about the *quid pro quo* which the rich man gets from the government, he does not get any more protection from the government than the poor man; precisely the same. Put the houses side by side in your illustration. Here is a gentleman who has a house on the main highway; immediately behind it is the house of a poor man which pays taxes. What does the government give him? You say police protection. Yes, police protection; and the rich man perhaps has a private watchman on his beat, burglar insurance, fire insurance, window-glass insurance, and every kind of insurance besides the protection which the government affords him for the amount of taxes that he pays, which is inadequate to make him feel safe in his home: If he wants a police officer he is on his beat half a mile away. No matter what his taxes are he cannot call for an additional officer. It is all very well to talk about the protection which the government throws around the property in return for the contribution that is made in the form of taxes; but we have gone to the point that simply because a man happens to possess a larger sum of money than somebody else, the man who has the smaller fortune, and who perhaps does not realize how far he is crippling that richer man in carrying through not only the duties, but the charities and amenities of life, may be crippled in the performance by the rude hand of government stretched out under the guise of law, but in reality the hand of the ruffian to take him by the throat and take from him his property. The idea that he ought to yield to the general demand for a division of interest is communism, socialism, radicalism run mad, demanding something new in the amendment of the constitution under the general idea that somehow or other it ought not to be considered a wise thing to put restraint in the constitution on the exercise of the taxing power which Chief Justic Marshall said in a sentence which lives forever, because it is true, "the power to tax is to power to destroy."

Mr. McCORMICK. Mr. Chairman: I have great confidence in the common sense and good judgment of the American citizenship, and the reason I asked the question I did in regard to this amendment as it relates to the United States constitution is because I wanted to clarify in my mind exactly what the constitution is as it exists in our United States government, and Mr. Pepper, I am grateful to him for having clarified it in my mind. I believe that the least Penn-

sylvania can do is to put itself on a parity with the United States in regard to trusting its citizenship not to confiscate property and that its legislative body elected by the people will very well handle a great subject of this kind. I think they have done it pretty well in the national government. There are many imperfections in our taxing power, but it proved that even when put into effect during the great war and a new Congress came into office and there was no attempt to change any of it, and I have not seen that thrift has been killed by the excessive taxes that now exist on great fortunes. The country has never been as prosperous or as busy or as active as it is today. I have not seen a great manufacturing concern that is making great profits stop producing. The tax is based upon the income, and the greater the income still greater the share that the manufacturer himself retains.

Mr. CARSON. They pass the buck to the consumer by adding to the price.

Mr. McCORMICK. In some cases hardship has been incurred, in cities and on individuals, just as hardship occurred during the war time by the man who is pulled out of his business and sent abroad across sea for thirty dollars a month, just as hardship occurs during these artificial times when a man loses his life and the widow is left to care for the children. Those things occurred and those are things we have to consider, but they are due to the unnatural causes and conditions and to the inequality of living, and any tax system today is a hardship under our old system. People you know and I know who have property have to pay taxes under a tax system today, and to go back is confiscatory. If this city of Harrisburg raised its tax limit too high and foolishly spent its money it could drive people out of Harrisburg. I trust to the common sense of the voters of Harrisburg to see that does not happen, just as I am willing to trust to the voters of Pennsylvania to get a legislature that will not kill thrift and will not destroy this great commonwealth of ours. I had a little doubt as I heard the debate as to whether or not we were going away beyond the attitude as taken by our national government. When I found we are simply bringing Pennsylvania to the level and to the same standard as our United States government, I am perfectly willing to vote for this measure without fear or doubt in my own mind.

Mr. REED. Mr. Chairman: I did not intend to say anything more, but I cannot let the last remarks go without some answer. Mr. Pepper said we should look at this thing calmly. Let us look at it calmly and see what the gentlemen are trying to do. In the first place, it seems to be conceded that there is no present necessity for this additional tax. The state is prosperous, its revenues are large, and there is no necessity for any additional tax; so there must be some other reason.

Mr. McCORMICK. Mr. Chairman: This is for fifty years.

Mr. REED. Mr. Chairman: I know it is; but the state is not going backwards, and when the time comes that they need more revenue it will get it without changing the form of taxation. There is some other reason than that which Mr. Pinchot gives us, and that is because it is wrong for the rich man to have protection without paying more for it in proportion than the poor man; so we have raised at once in this commission, of all commissions supposed to be

conservative, and looking at things calmly, we have raised at once the question Judge Goddon raised squarely, of motive. That is the question put up to you. I hold no brief for the rich man; so far as I am concerned, you can tax him all you want, but it is not fair and right and economically sound, and the effects on this state will be vicious and bad. So far as the professional man is concerned, if we save a dollar we can buy a municipal bond or government bond and put it away where moth and rust cannot get at it, and where the Democratic party cannot tax it, but the manufacturer on whom this state relies for its prosperity cannot put his property away; it is there and it is taxed and, as Mr. Carson says, the result of it is passed on to the consumer. Now my friend, the last speaker, takes great credit to the Democratic party for the present tax system. It was not the intention of Congress when that income tax amendment was passed to institute a system of progressive tax. Why President Taft ever fell for it I do not know, but he was very insistent on the passage of that amendment because he said there might be an emergency when this country would have to raise suddenly a large amount of money and, of course, Congress would not use it unless it was absolutely necessary. It was not six months until Congress was at it and had passed an income tax bill. Then came the war, and I am not reflecting on my friends here, the democrats; they had to raise the money and raise it by this progressive system, always promising that some time those sur-taxes would be reduced. They have not been reduced. Now I find that is blamed on a republican Congress. How can a republican Congress reduce sur-taxes when they have the democratic debt to pay for, and how can they pass any bill when they have a democratic president to veto it? I was not going to drag politics into this, but I am not going to let my friend get away with it without an answer, and get into books which will be read for the next fifty years. Mr. Voll, in all sincerity talked about the rich man and how he ought to be despoiled of his possessions, and the disgrace to die rich, and so on. Well, it is inconvenient to die at any time under any sort of conditions; but the rich man today, so far as I have seen, gets mighty little fun out of his possessions. In spite of himself he is a steward of his wealth, he cannot lock it up in his box and look at it, he will pay his tax. He has to make it by work, and how does he do it? Either by taking the risk himself and investing it in some manufacturing or mining enterprise or some railroad or unfortunately in some traction company. If he does not want to go into business himself, he must of necessity invest it in the securities that somebody else is venturing in possibly. So that in spite of himself his money works and all that he gets out of it is food and some clothes, and he usually has dyspepsia and does not eat as much as some other people, and usually gets six feet of ground when he is dead, and that is all there is to it, and he usually has more trouble with his family and children than a poor man. Now, the plain purpose if this act, gentlemen, Mr. Voll and Mr. Pinchot sincerely and Judge Gordon out of a spirit of mischief, I again repeat he does not believe a word he says, is to create in this constitution without any necessity a system by which every borough, city, and state authority can tax you and me and even Mr. McCormick according to the estimate they make of our ability to pay, not according to the benefit we get out of the tax. It is not decent taxation, it is confiscation,

and confiscation without any rule or regulation, but according to the whim of the tax-assessing authority for the little borough in which you may happen to live, which desires to pave all its streets, and you have a large property. It is a beautiful theory that the borough will promptly proceed to grade its taxes and make you pay ninety per cent. of the cost of the street and can do it under this provision. We do not need anything of that sort, and why put our stamp of approval upon a system that is confiscation pure and simple?

Mr. VOLL. Mr. Chairman: I would like to correct the previous speaker that I made the statement that it is a crime to die rich. I simply quoted what a rich man stated yesterday in New York.

Mr. REED. I am not holding you responsible.

Mr. VOLL. Mr. Chairman: I cannot agree with Judge Reed that we are forcing this system of graded taxation upon the state without necessity. If I understand the amendment right it gives the legislature the power to tax if it is necessary to raise tax, but it does not say that it shall be done without necessity, but places on the legislature the power to place a graded tax if there is a necessity for it. So that if the state is wealthy enough at this time without levying any additional tax there is no necessity for the legislature to levy additional tax after this amendment is passed.

Mr. PEPPER. Mr. Chairman: The resolution that is pending is the resolution that I have introduced, and I am happy to find out that I have defied classification. I am neither accused of not knowing what I am advocating nor of perversely advocating for an improper reason something which I fully understand; therefore, possibly I may conclude the debate, if that is the right of the mover, by saying that I have sponsored this proposition because I thoroughly believe that we should be derelict in our duty if we were to start the commonwealth of Pennsylvania upon its way for a fifty-year period without arming the legislature with that power of taxation which we have found essential in the case of the national government. That is the whole question. If one distrusts representative assemblies, one is opposed to this proposition; if one trusts representative assemblies, one is in favor of it unless he is prepared to assert that a graded and progressive tax if properly and honestly applied is an unsound form of taxation. If one undertakes to assert that the graded and progressive tax honestly and scientifically applied is an unsound form of taxation, he arrays himself against all modern thinking on the part of those who have made a study of taxation. So it seems to me that the thing upon which we ought to vote is the simple proposition whether or not during the fifty-year period that lies ahead of us the commonwealth of Pennsylvania is or is not to be invested with the same power of taxation as that which we have trusted to our national government. That, I take it, is the question upon which we are going to vote.

On the motion recurring,

Will the committee agree to the motion?

It was not agreed to.

RECESS

Mr. McCORMICK. Mr. Chairman: I move that the committee do now take a recess until 1:30 o'clock P. M.

Mrs. MILLER. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 1:05 o'clock P. M., the committee took a recess until 1:30 o'clock P. M.

AFTER RECESS

The Committee of the whole reconvened at 1:30 o'clock P. M.

The Chairman, William L. Schaffer, in the Chair.

The CHAIRMAN. The hour fixed for the reconvening of the Committee of the Whole having arrived, the committee will be in order.

ARTICLE IX, Section 1.

The Committee of the Whole resumed the consideration of section 1 of article IX and suggested amendments.

The secretary read the amendment submitted in writing by D. W. Nevin, of Easton, Pa., as follows:

Amend by striking out the present section and substituting the following:

All [taxes] *assessments* shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, *and the rate shall be fixed in accordance with the need of the authority levying the tax.* Taxes shall be levied and collected under general laws.

This amendment was not called up.

The secretary read the amendment submitted in writing by H. K. Siebeneck, Esq., of Pittsburgh, Pa., as follows:

Amend by adding at the end thereof the following:

A graduated income and inheritance tax containing reasonable exemptions may be enacted.

Mr. McCORMICK. Mr. Chairman: I move the adoption of this amendment.

The CHAIRMAN. The chair hears no second, and the amendment will be dropped.

The secretary read the amendment submitted in writing by Robert White, Esq., city solicitor, New Castle, Pa., as follows:

Amend by adding at the end thereof the following:

For the purpose of levying county and other municipal taxes, there shall be established in each county a single agency for the assessment of property (uniformly throughout the said county), and all such assessments shall be of and for the full and true valuation of the said property.

Mr. FISHER. Mr. Chairman: I move the adoption of this amendment.

The CHAIRMAN. It may be that you will prefer to consider the later amendment. Will you look at both of them and tell me which is the preferable one?

Mr. FISHER. Mr. Chairman: I withdraw my motion.

The CHAIRMAN. There being no motion to adopt this amendment, it will be dropped.

The secretary read the amendment submitted in writing by Hon. George E. Alter, Commissioner, as follows:

Amend by adding at the end thereof the following:

The valuations of property for municipal taxation shall be made by one body in each county, subject to appeals to court as shall be provided by law, and the valuations thus made shall be the basis of any tax levied by the county or by any other municipality within the same.

Mr. FISHER. Mr. Chairman: I move the adoption of this amendment.

Mr. TYSON. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. FISHER. Mr. Chairman: I do not know whether I ought to undertake to champion this proposition of Mr. Alter, but in his absence I feel like saying a few words about it, because, as you all know I am from the country and am familiar with conditions in the less densely populated sections of the state. The present system is for each municipality to have an assessor who makes a triennial assessment, and each township or borough or municipality therefore has a basis of valuation of its own. After the triennial assessment is made the assessment then goes to the county commissioners who can resolve themselves, if they choose, into a board of revision with very limited power. The result is a very unequal valuation of property throughout the county, without any adequate authority to equalize valuations. Now, that may not make any difference with regard to the local taxes of each municipality, because if they make low valuations they make a correspondingly higher rate of tax. But when it comes to levying a tax for county purposes the townships and boroughs where they have a low valuation, pay a less amount of tax then those districts where they have a higher levy. Under the law as it stands each assessor takes an oath to value the property at its full market value. The law requires him to so value, and yet I think that there is scarcely an assessor in a township or borough of the state who is complying with the law or with his official obligation. In many districts the valuation runs along about two-thirds of what the market value would be; in other places they make a valuation of about fifty per cent. I will call your attention to the custom prevailing in Cambria county and the adjoining counties of Indiana and Blair. In Cambria county the county commissioners proceeded to meet this situation by calling in all of the local assessors and establishing a rate. Now, it was purely voluntary with the local assessors whether they accept the suggestion, but they do accept it, with the consequence that the property in Cambria county is assessed today at about its market value. The great Cambria Steel Company which formerly paid taxes on a reduced valuation now pays tax on its full, fair valuation. The same thing is true with a good many coal companies. Strange to say, when the system was proposed the property owners objected to it, but the board of commissioners and the assessors had the courage to go ahead with the scheme, and I can say to you with a considerable degree of knowledge that the system is giving complete satisfaction. Over in my own county we still have the confused method of valuation. In one township coal will be valued at one hundred dollars or two hundred dollars an acre, and in the adjoining township it will be valued at fifty dollars;

hence inequalities. I am thoroughly in favor of taking advantage of this opportunity to provide some method whereby there will be a uniform valuation, so that we can carry out the idea which we so earnestly debated this morning of uniformity of taxes. I hope that the Commission will adopt Mr. Alter's provision.

Mr. REED. Mr. Chairman: We have in the county of Allegheny the same confusion. The city of Pittsburgh has its assessors who assess the property on a low basis, and the township assessors on another basis. As Senator Fisher says, both have taken oaths to assess the property at its real value, and yet the assessment for the county is usually from half to a third less than the city assessments. Of course, in the end it probably does not do any particular mischief so far as the taxpayer is concerned, because the rate in the country is higher than it is in the city, but as a matter of uniformity, which we all believe in, it seems to me that this is a very beneficial provision.

Mr. FOX. Mr. Chairman: It occurs to me that the next suggestion made by Mr. Zeigler is better still than the one suggested by Mr. Alter, which provides for the assessment of real estate as distinct from the valuation of property for municipal taxation.

Mr. REED. Mr. Chairman: Yes; to have them for the county, but that does not say we cannot assess them. We do not have to accept them by the city.

Mr. FOX. Mr. Chairman: "All real estate in the boroughs, townships, school districts and cities included in the territorial limits of the county."

Mr. REED. You mean the one which reads: "The general assembly shall, by general laws, provide for county board of real estate assessors, which shall assess the value of all real estate in the boroughs, township, school districts and cities included in the territorial limits of the county?"

Mr. FOX. Mr. Chairman: My suggestion would be that we add to this what is incorporated in Mr. Alter's, "subject to appeals to court as shall be provided by law, and the valuations made shall be the basis of any tax levied by the county or by any other municipality within the same."

The CHAIRMAN. You move that as a substitute for Mr. Alter's suggestion?

Mr. FOX. Mr. Chairman: Yes, sir.

Mr. McCORMICK. Mr. Chairman: I second the substitute.

On the question,

Will the Committee agree to the substitute?

Mr. FISHER. Mr. Chairman: Before this vote is taken on that motion, I would like to suggest a further amendment by inserting in the last line after the word "cities" and before the word "included" the words "and other municipalities."

The CHAIRMAN. Is the amendment accepted by Judge Fox?

Mr. FOX. Mr. Chairman: It is.

The CHAIRMAN. That is Mr. Zeigler's amendment with something added to it.

Mr. FOX. Mr. Chairman: I incorporated part of Mr. Alter's suggestion with it.

On the question recurring,

Will the Committee agree to the substitute?

It was agreed to.

Mr. GORDON. Mr. Chairman: I would like to inquire whether the amendment just adopted would affect the city of Philadelphia.

Mr. FOX. Mr. Chairman: I suppose it would; yes, sir.

Mr. GORDON. Mr. Chairman: I am sorry Mr. Connelly is not present. We have a most extraordinary lack of assessment in Philadelphia.

Mr. CARSON. Are assessments made by the ward assessors?

The CHAIRMAN. This will make a uniform board of assessment for every county in the state.

Mr. GORDON. Mr. Chairman: In Philadelphia we have a board of revision of taxes which appoints the assessor.

The CHAIRMAN. Could not yond board be retained under the law as this is a grant of power to the legislature?

Mr. CARSON. Mr. Chairman: That is one of the boards that will be swept away by depriving judges of the power to appoint.

Mr. GORDON. Mr. Chairman: I think this is mandatory on the legislature to provide for the county of Philadelphia a board of real estate assessment to assess all county and all city property.

Mr. ENGLISH. Mr. Chairman: May I ask Judge Gordon whether his board of tax revision is not merely an appellate tribunal to which appeals may be taken from the board of assessors?

Mr. GORDON. Mr. Chairman: The board of revision of taxes has appointed the assessors.

Mr. McCORMICK. Mr. Chairman: I would like to ask whether in the amendment which has just been voted upon the words "county boards" should not be singular. County boards may mean three or four assessors in each county, and that is something which we want to get away from.

The CHAIRMAN. The secretary will read Judge Fox's substitute.

The secretary then read the amendment as follows:

The general assembly shall, by general laws, provide for county boards and real estate assessors, which shall assess the value of all real estate in cities, boroughs, townships and school districts included in the territorial limits of the county, subject to appeals to court as shall be provided by law, and the valuations thus made shall be the basis of any tax levied by the county or by any other municipality within the same.

The CHAIRMAN. That is the substitute that has been adopted.

Mr. KELLY. Mr. Chairman. Would not that be rather ambiguous? I should think the plural would be better, "county boards." There are a lot of counties and therefore there would have to be a lot of boards, one for each county.

Mr. McCORMICK. Mr. Chairman: How would it do to say a board for each county?

Mr. KELLY. Mr. Chairman: That would perhaps remove the ambignity.

Mr. REED. Mr. Chairman: Do we not meet the case of Philadelphia better by taking Mr. Alters' amendment than by taking Judge Fox's substitute, and having the valuation of property made by one body in each county? That which seems to fit their case.

Mr. FISHER. Mr. Chairman: We are discussing this after we have acted on it. May I say that I believe Mr. Alter's proposition is superior in that it does not limit the power of the central board to real estate valuations. This provision would allow all the valuations to be made under the direction of one central board, whereas the one we

have acted upon, proposed by Mr. Ziegler and amended by Judge Fox, limits the authority of the central board to real estate valuations, and therefore would leave us a dual system of valuations. We would be obliged to have a separate system for the personal property valuation. I wonder if this is a wise provision.

The CHAIRMAN. We are discussing something that is not before us.

Mr. CARSON. Mr. Chairman: I think Mr. Alter's is the safest.

RECONSIDERATION OF VOTE

Mr. REED. Mr. Chairman: I move to reconsider the vote by which Judge Fox's substitute was adopted.

Mr. McCORMICK. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question recurring.

Will the committee agree to the substitute?

Mr. FOX. Mr. Chairman: I withdraw my substitute.

On the question recurring,

Will the committee agree to Mr. Alter's suggested amendment?

It was agreed to.

The secretary read the amendment submitted by J. W. Zeigler, of Philadelphia, as follows:

Amend by adding at the end thereof the following:

The general assembly shall, by general laws, provide for county boards of real estate assessors, which shall assess the value of all real estate in the boroughs, townships, school districts, and cities included in the territorial limits of the county.

The CHAIRMAN: As the chair understands it, the action taken on Mr. Alter's suggested amendment disposes of the proposition submitted by Mr. Zeigler, and therefore this suggestion will be dropped.

The secretary read the amendment submitted in writing by the Civic Club of Allegheny County, Pittsburgh, Pa., as follows:

Amend by adding at the end thereof the following:

But a reasonable exemption from inheritance taxes may be allowed.

Mr. REED. Mr. Chairman: I would like to know what the amendment is about. I cannot see any relevancy between it and the amendment just adopted.

The CHAIRMAN. This is an amendment to the main section.

Mr. FISHER. Mr. Chairman: I move the adoption of this amendment.

Mr. REED. Mr. Chairman: I second the motion.

The motion was agreed to.

The secretary read the amendment submitted in writing by the Bureau of Municipal Research of Philadelphia, as follows:

Add at the end thereof the following:

No private corporation and no property of a private corporation shall ever be exempt from any state or municipal tax if any other private corporation of the same class or any other property of the same class is subject to such tax. All such exemptions now or heretofore existing are avoided, save only such as exist by virtue of contract. No private corporation now exempt, by virtue of contract, from any state or municipal tax, whether in whole or in part, shall ever have the benefit of any future legislation, whether by general or special laws, until such corporation shall have filed with the secretary of state a complete and irrevocable waiver of all such exemptions from and after the adoption of this section, together with proof that such corporation has paid all taxes levied or collectible between the adoption of this section and the filing of such waiver to which such corporation would have been liable and no such exemption existed or been assumed to have existed.

Mr. REED. Mr. Chairman: I would like to call your attention to the fact that on page 66 of the calendar, the section on taxation of corporations which the printer left out in some way, "The power to tax corporations and corporate property shall not be surrendered or suspended by any contract or grant to which the state shall be a party," apparently covers the same subject.

The CHAIRMAN. The chair hears no motion to adopt this suggested amendment, and it will therefore be dropped.

On the motion,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE IX, SECTION 1-A (NEW).

The Committee of the Whole proceeded to the consideration of the proposed new section 1-A of article IX.

The secretary read the proposed new section submitted in writing by Hon. C. Stuart Patterson, of Philadelphia, as follows:

Section 1-A.

Amend by adding the following new section 1-A:

All moneys collected from inheritance taxes shall constitute a special and separate fund in the treasury of the commonwealth, to be drawn on only under specific appropriations by the legislature for the payment of the public debt of the commonwealth, or for the construction of state highways, or for any other specific purpose of capital expenditure.

This amendment was not called up.

ARTICLE IX, SECTION 2.

The committee of the whole proceeded to the consideration of section 2 of article IX and suggested amendments.

The secretary read the section and amendment submitted in writing by the Civic Club of Allegheny County, Pittsburgh, Pa., as follows:

Section 2. Exemption From Taxation Limited.

1 The general assembly may, by general laws, exempt from taxation public
2 property used for public purposes, actual places of religious worship, places of
3 burial not used or held for private or corporate profit, and institutions of purely
4 public charity; but in all cases in which exemption is claimed for property
5 used wholly or in part for educational purposes on the ground that the same
6 is an actual place of religious worship or a purely public charity, the exemption
7 shall be allowed only where the language of instruction is English and where
8 the educational standards are at least as high as the standards of public schools
9 of a similar grade. All other exemptions shall be void.

Amend by striking out all except the first clause, making the section read as follows:

The general assembly may, by general laws, exempt from taxation public property used for public purposes.

This amendment was not called up.

The secretary read the amendments submitted by the chair, as follows:

Amend by inserting on line 1 after the word "exempt" the words *persons and property* and following the word "taxation" on line 1 by a period.

Amend further by striking out on lines 1, 2 and 3 the words (public property used for public purposes, actual places of religious worship, places of burial not used or held for private or corporate profit, and institutions of purely public charity; but).

Amend further by striking out the last sentence.

The CHAIRMAN. It seems to the chair that these amendments may not be necessary in view of the one just adopted providing for a reasonable exemption from inheritance tax. That was the thought I had in mind in drafting the amendment. These suggested amendments by the chair will therefore be dropped.

The secretary read the amendment submitted by John A. McSparran, Master, Pennsylvania State Grange, at public hearings April 21, 1920, as follows:

Amend by adding to the last sentence the words *except as allowed by section 1 of this article.*

This amendment was not called up.

ARTICLE IX, SECTION 3.

The committee of the whole proceeded to the consideration of section 3 of article IX.

The secretary read the section and notation as follows:

Section 3. Taxation of Corporations.

1 The power to tax corporations and corporate property shall not be sur-
2 rendered or suspended by any contract or grant to which the state shall be
3 a party.

Note by Secretary. This section, which is dropped from the preliminary draft, should be retained, as an examination of the proceedings shows this to have been the intention of the committee of the whole, and the section is included in this way in the bound volumes of the proceedings, etc., of the commission. (See proceedings of January 7, 1920.)

The CHAIRMAN. Unless there is objection, this amendment will be considered as having been adopted by the committee of the whole. The chair hears no objection, and the secretary will accordingly note that this section has been approved by the Committee of the Whole.

ARTICLE IX, SECTION 4.

The committee of the whole proceeded to the consideration of section 4 of article IX and suggested amendments.

The secretary read the section and amendment submitted by John Ihlder, Secretary, Philadelphia Housing Association, at public hearings April 6, 1920, as follows:

Section 4. Limitation on State Debt.

1 No debt shall be created by or on behalf of the state except to supply casual
2 deficiencies of revenue not exceeding one million dollars, repel invasion, suppress
3 insurrection, defend the state in war, pay existing debts, or, with the approval
4 of two-thirds of all the members elected to each house, improve and rebuild
5 the highways of the commonwealth and acquire land within the commonwealth
6 for forest purposes; provided, however, that no such indebtedness for highways
7 shall be incurred in excess of one hundred and fifty million dollars, or for forest
8 purposes in excess of twenty-five million dollars, and such indebtedness shall
9 only be created with the consent of the electors of the state voting thereon at
10 a public election in the manner provided by law.

Amend by inserting in line 6 after the word "forest" the words *and homestead,* and by inserting on line 8 after the words "twenty-five million dollars" the words *or for homestead purposes in excess of twenty-five million dollars.*

Mr. VOLL. Mr. Chairman: I move the adoption of this amendment.

The CHAIRMAN. The chair hears no second, and the suggested amendment will therefore be dropped.

The secretary read the amendment submitted in writing by the Bureau of Municipal Research of Philadelphia as follows:

Amend by inserting after the word "house" on line 4 the following: *lend money to municipalities of the commonwealth or otherwise acquire bonds and other evidences of indebtedness of such municipalities.*

This amendment was not called up.

ARTICLE IX, SECTION 5.

The committee of the whole proceeded to the consideration of section 5 of article IX and suggested amendment.

The secretary read the section and amendment submitted in writing by Hon. Alexander Simpson, Jr., of Philadelphia, as follows:

Section 5. Limitation on State Loans.

1 All laws, authorizing the borrowing of money by and on behalf of the state,
2 shall specify the purpose for which the money is to be used, and the money
3 so borrowed shall be used for the purpose specified and no other.

Amend by inserting on line 1 after the word "state" the words *or of any municipality.*

Mr. REED. Mr. Chairman: I move the adoption of this amendment.

Mr. THORPE. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. GORDON. Mr. Chairman: I do not see what relevancy this would have to the section at all. I cannot conceive how any good could be accomplished by the legislature authorizing specific loans by municipalities. I think Justice Simpson has misapprehended the scope and purpose of the section.

The CHAIRMAN. The amendment refers to loans of municipalities, which is an entirely different purpose.

Mr. ENGLISH. Mr. Chairman: I agree with Judge Gordon that there was evidently some confusion in the mind of the author of this suggestion. It would be impossible to have such a law, and I think this section refers to an act of assembly which directs municipalities to specify the purpose for which a particular loan is to be made, the various acts of assembly require that in all city ordinances they must specify the purpose for which the money is to be raised; and I do not believe this amendment will do anything but add confusion to section five.

Mr. REED. Mr. Chairman: As I have found out what it is about, I withdraw my motion.

The CHAIRMAN. The proposition not being fathered, the suggested amendment will be dropped.

ARTICLE IX, SECTION 6.

The committee of the whole proceeded to the consideration of section 6 of article IX and suggested amendments.

The secretary read the section and amendment submitted in writing by Hon. Alexander Simpson, Jr., of Philadelphia, as follows:

Section 6. State Credit Not to be Pledged.

1 The credit of the commonwealth shall not be pledged or loaned to any in-
2 dividual, company, corporation or association, nor shall the commonwealth be-
3 come a joint owner or stockholder in any company, association or corporation.

Amend by inserting on line 1 as the first word the word *Neither*, by inserting on line 1 after the word "commonwealth" the words *or that of any municipality*, and by inserting on line 2 after the word "commonwealth" the words *or any municipality*, and after the word "become" the words *the agent or*, striking out the words [a joint owner].

This amendment was not called up.

The secretary read the amendment submitted in writing by Hon. Alexander Simpson, Jr., of Philadelphia, as follows:

Amend further by adding thereto the second clause of section 21 of the article on municipalities, so that the section as amended will read:

Neither the credit of the commonwealth *nor that of any municipality* shall be pledged or loaned to any individual, company, corporation or association, nor shall the commonwealth *or any municipality* become *the agent of* or stockholder in any company, association or corporation; *but a lease by a municipality for a public service facility owned by it shall not be construed to violate the provisions of this section although the principal consideration for the lease in the covenant of the lessee to use the facility under regulations protective of the public interest, or because the provision for a pecuniary return of the lessor is made contingent upon the earnings of the lessee's entire system.*

Mr. PEPPER. Mr. Chairman: As I see it, this enlarges the prohibition on the loan of credit so as to make it applicable to the case of the credit of a municipality as well as the credit of the commonwealth. I suppose that the same policy that forbids the loan of credit of the commonwealth ought, if consistently pursued, to prohibit also the loan of credit by a municipality.

Mr. CARSON. Where is the amendment, Mr. Pepper?

Mr. PEPPER. It is at the bottom of page 67.

The CHAIRMAN. The chair would think that it is specifically covered by the other section.

There being no motion to adopt this proposed amendment, it will be dropped.

ARTICLE IX, SECTION 9.

The committe of the whole proceeded to the consideration of section 9 of article IX and suggested amendments.

The secretary read the section and amendment submitted in writing by Hon. Alexander Simpson, Jr., of Philadelphia, as follows:

Section 9. Municipal Debt Not to be Assumed by State.—Exceptions.

1 The commonwealth shall not assume the debt, or any part thereof, of any
2 city, county, borough or township, unless such debt shall have been enacted to
3 enable the state to repel invasion, suppress domestic insurrection, defend itself
4 in time of war, or to assist the state in the discharge of any portion of its
5 present indebtedness.

Amend by striking out on line 2 the words [city, county, borough or township] and substituting thereof the word *municipality*, and by striking out the word [enacted] on line 2 and inserting in lieu thereof the word *contracted*.

Mr. CARSON. Mr. Chairman: Is it not quite clear that the world "enacted" is a mistake and that the word "contracted" was really meant?

The CHAIRMAN. Yes, that is a clerical error.

Mr. CARSON. Mr. Chairman: I move the adoption of this amendment.

Mr. ENGLISH. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. REED. Mr. Chairman: May I suggest while we are at it we take up the next section and consider the two together. There seems to have been in the Constitution of 1873 a provision that the commonwealth shall not assume the debt unless contracted to assist the state in discharging any portion of its present indebtedness. I suppose that is past and gone long ago, and that seems to be the purpose of this amendment.

The CHAIRMAN. What is Judge Reed's motion?

Mr. REED. Mr. Chairman: I ask that we consider the two sections together and possibly we can cover them both. If it will not save time, let us go ahead.

The CHAIRMAN. The question is on the motion made by Mr. Carson.

Mr. CARSON. Mr. Chairman: My suggestion simply related to the suggestion of Justice Simpson.

On the question recurring,

Will the committee agree to the motion?

It was agreed to.

The secretary read the amendment submitted in writing by the Bureau of Municipal Research of Philadelphia, as follows:

Amend by striking out the words [defend itself in time of war, or to assist the state in the discharge of any portion of its present indebtedness] beginning on line 4 and insert in lieu thereof the words *or defend itself in time of war.*

Mr. REED. Mr. Chairman: I move the adoption of this amendment.

Mr. CARSON. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE IX, SECTION 11.

The committee of the whole proceeded to the consideration of section 11 of article IX and suggested amendments.

The secretary read the section and amendment submitted in writing by the Bureau of Municipal Research of Philadelphia, as follows:

Section 11. State Sinking Fund.

1 To provide for the payment of the present debt, and any additional debt
2 contracted as aforesaid, the general assembly shall continue and maintain the
3 sinking fund, sufficient to pay the accruing interest on such debt, and annually
4 to reduce the principal thereof by a sum not less than two hundred and fifty
5 thousand dollars; the said sinking fund shall consist of the proceeds of the
6 sales of the public works or any part thereof, and of the income or proceeds
7 of the sale of any stocks owned by the commonwealth, together with other funds
8 and resources that may be designated by law, and shall be increased from time
9 to time by assigning to it any part of the taxes or other revenues of the state
10 not required for the ordinary and current expenses of government; and unless
11 in case of war, invasion or insurrection, no part of the said sinking fund shall
12 be used or applied otherwise than in the extinguishment of the public debt.

Amend by striking out the word [unless in case of war, invasion or insurrection] beginning on line 11.

Mr. PEPPER. Mr. Chairman: I move the adoption of this amendment.

Mr. ENGLISH. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. PEPPER. Mr. Chairman: It might save time to call attention to the fact that the only change made by this proposal is to strike out the provisions which deprives the sinking fund of its inviolability in case of war, invasion or insurrection.

On the motion recurring,

Will the committee agree to the motion?

It was agreed to.

The secretary read the amendment submitted in writing by the Chairman, as follows:

Amend by striking out on lines 4 and 5 the words [two hundred and fifty thousand dollars] and inserting in lieu thereof the words *three per centum of the principal thereof.*

Mr. ENGLISH. Mr. Chairman: I move the adoption of this amendment.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

The secretary read the amendment submitted in writing by the Civic Club of Allegheny County, Pittsburgh, Pa., and suggested also by H. K. Siebeneck, Esq., of Pittsburgh, Pa., as follows:

Amend by striking out on lines 4 and 5 the words [a sum not less than two hundred and fifty thousand dollars] and inserting in lieu thereof the words *not less than three per centum thereof.*

The CHAIRMAN. This suggestion covers the same proposition as the preceding amendment, and it will therefore be dropped.

ARTICLE IX, SECTION 15-A.

The committee of the whole proceeded to the consideration of section 15-A of article IX and suggested amendments.

The secretary read the section and amendment submitted in writing by Mark R. Craig, title officer, Potter Title and Trust Company, Pittsburgh, Pa., as follows:

Section 15-A. Place of Paying Taxes.

1 The legislature shall provide that taxpayers may pay all taxes at one office
2 in each city and borough.

Substitute for this section the following:

The legislature shall provide that taxpayers *shall* pay all *municipal* taxes at one office in *each county.*

The CHAIRMAN. I think this same amendment was offered during our deliberations by Judge Kelly.

Mr. PEPPER. Mr. Chairman: I move the adoption of this amendment. It seems to me to be wise to make it obligatory that the tax should be paid at one place and not leave it optional, as our section apparently does now, whether the taxpayers shall pay at one office or not.

The CHAIRMAN. The original proposition of Judge Kelly, which is in section 15-A, provides that taxpayers may pay taxes in a city or borough. The amendment proposed provides for one office in each county.

Mr. KELLY. Mr. Chairman: That would make the matter worse.

The CHAIRMAN. There being no second to the motion, the amendment will be dropped.

The secretary read the amendment submitted in writing by the Legislative Reference Bureau, Harrisburg, Pa., as follows:

Amend by striking out the word [and] on line 2 and by inserting after the word "borough" the words *and township.*

This amendment was not called up.

The secretary read the amendment submitted in writing by the Bureau of Municipal Research of Philadelphia as follows:

Amend by inserting after the word "all" on line 1 the word *municipal.*

Mr. KELLY. Mr. Chairman: I would like to have a little information as to the payment of state tax. In other words, would the provision as proposed by me and found in section 15-A, affect the question of the payment by corporations of state tax? If it would, then I think this last proposed amendment would cure the objection. Perhaps it would in the language as drawn interfere with the payment of state tax, particularly corporation state tax. Of course, the tax we pay upon mortgages, judgments and things of that kind we pay to a local collector, but there are taxes I presume that have to be paid by the company direct or sent to Harrisburg, and it was not my purpose to interfere with anything of that kind. I am a little bit in the dark as to that and would like information. If my provision does not give the advantage I propose and would interfere with the companies that pay state tax, I would move that the last amendment proposed by the Bureau of Municipal Research of Philadelphia be adopted.

Mr. PEPPER. Mr. Chairman: It would remove the obscurity in any event.

Mr. KELLY. Mr. Chairman: With that in view I move the adoption of the last amendment.

Mr. PEPPER. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. McCORMICK. It says on line two. Is not the word "all" on line one.

The CHAIRMAN. So that the amendment shall read, if this passes, "The legislature shall provide that taxpayers may pay all municipal taxes at one office in each city and borough."

On the question recurring,

Will the committee agree to the motion?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE V.

The CHAIRMAN. The printed matter has just come in which will enable us to consider article V, and we will now go back to article V, the judiciary article, on page 32 of the calendar. It was the information of the chair that some member of the commission had an amendment that might very greatly facilitate the consideration of this judiciary article.

Mr. PEPPER. Mr. Chairman: I have a proposal to make which, if adopted, I think would settle the fundamental principle in such a way as to relieve us of a great deal of discussion and detail. The proposal is this:

"Resolved, That we proceed to discuss article V on the understanding that the constitution should provide only for the supreme court, common pleas and orphans' court, and that it should contain an express statement that subject to the provisions of the article, all courts existing at the time of the adoption of the constitution shall remain as then established until altered or abolished by law."

The CHAIRMAN. Is that in the form of a motion?

Mr. PEPPER. Mr. Chairman: I offer it as a motion.

Mr. FISHER. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. REED. Mr. Chairman: That does not permit us to discuss it.

The CHAIRMAN. It is a form of procedure now to enable us to get through this article without detail. Otherwise we will be required to take up a great deal of time.

On the question recurring,

Will the committee agree to the motion?

It was agreed to.

ARTICLE V, SECTION 1.

The committee of the whole proceeded to the consideration of section 1 of article V and suggested amendments.

The secretary read the section and amendments suggested by Hon. Francis Shunk Brown, of Philadelphia, as follows:

Section 1. Judicial Power.

1 The judicial power of this commonwealth shall be vested in a supreme court,
2 a superior court, in courts of common pleas, courts of oyer and terminer and gen-
3 eral jail delivery, courts of quarter sessions of the peace, orphans' courts, district
4 peace judges, and in such other courts as the general assembly may from time to
5 time establish.

Amend by striking out on line 2 the words [superior court, in] on lines 2 and 3 the words [courts of oyer and terminer and the general jail delivery] and on lines 3 and 4 the words [district peace judges].

Mr. FISHER. Mr. Chairman: I move the adoption of this amendment.

Mr. PEPPER. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion.

The CHAIRMAN. May the chair inquire for information whether the proposition is that the powers of the criminal court should be vested in the court of common pleas? I see no mention of criminal courts. Is it intended that the powers of the criminal courts are to be vested in the common pleas?

Mr. PEPPER. Mr. Chairman: I do not so understand it, sir, but that only constitutional tribunals, only tribunals which shall be regarded as permanently fixed, shall be those here specified, and then under the procedural resolution we shall provide for the continuance of all other courts, including the criminal courts, until or unless changed by law.

Mr. ENGLISH. Mr. Chairman: May I call Mr. Pepper's attention to the fact that this amendment as printed does not exclude from the section courts of quarter session of the peace?

Mr. PEPPER. That is a printer's or clerical error somewhere. In other words, the purpose of the resolution, as I have understood it, and I take it as Senator Fisher meant to present it, was to limit the number of constitutional courts to three, a supreme court, a court of common pleas and orphans' court.

Mr. FISHER. Mr. Chairman: The motion is to strike out certain words, and I desire to have the amendment include courts of quarter sessions of the peace.

Mr. GORDON. Mr. Chairman: I would like to have Mr. Pepper further explain what his purpose is as to courts of oyer and terminer and general jail delivery and quarter sessions of the peace.

Mr. PEPPER. Merely this, Mr. Chairman, that while it is clear that a criminal court or courts must be a necessary and permanent part of our judicial system, it is not in our minds clear that a distinction should be maintained permanently as between oyer and terminer and quarter sessions and general jail delivery; but if we retain any one of these courts in the constitution by title, we to that extent crystalize the criminal court as it stands at present, at least so far as the courts we retain. If the present amendment were to prevail it would leave the legislature free to deal with the whole subject of reforming our system of criminal courts either by continuing the three, if that is thought wise, by substituting two, or by giving all criminal jurisdiction to one. In other words, the amendment proceeds upon the theory that our present distribution of functions as between the three courts is not a permanent distribution and does not deserve to be crystalized in the Constitution by constitutional provision.

Mr. CARSON. Mr. Chairman: I rise for the purpose of putting before your minds, before you come to vote, the exact thing in the Constitution which would be secured by the adoption of this suggestion, and not with a view of expressing any antagonism on my own part to the redistribution of the courts. But when you come to deal with the judiciary department you have to remember that we are dealing with an independent coordinate tribunal which has stood as the safety-valve, so to speak, of our institutions, a department which is charged with power to check any exercisee of authority or any attempt at illegal exercise of authority on the part of the other departments. In other words, the courts are the guardians of the Constitution. I have looked into this matter of the use of words which stand in the present constitution and to which we have added by including the superior court and district peace judges, and with the exeception of these the clause stands exactly as it has stood for one hundred and thirty years.

In the administration of justice under Penn's charter, so far as the powers of the proprietary derived from the rights of that charter, granted by the crown were concerned, he had unlimited power to mold the judiciary in any way that he saw fit. He was a partical statesman, however, and when he arrived here he ascertained that courts of justice were already in existence on the banks of the Delaware, and had been so for over fifty years. Very few people recall to mind that Penn did not come to an unsettled wilderness. The Dutch and the Swedes and subsequently the English conquest of the state of New York which carried the Dutch soverignty on the Delaware with it, Penn found in existence on the shore of the Delaware. The Duke of York's laws had been in force since 1676, more than six years before his own charter was granted. The Duke of York's laws were really a code compiled under the authority of Sir Richard Nicolls who was delegated by the Duke to examine existing statutes in the way of judical establishment among the English-speaking communities in the New England colonies and of the south, and those colonies were older than Pennsylvania. The Duke of York's code was the result of an examination of what prevailed in Massachusetts, in Rhode Island, in Connecticut, in New York, in the Carolinas and in Virginia. Now, the jurisdiction, roughly speaking, was distributed between the courts of common pleas, the orphans' court and the courts of quarter sessions of the peace. Courts of oyer and terminer were not then known by title. Those courts under the Duke's code were erected on the substructure already in existence in the shape of the Swedish and Dutch courts. When Penn came, instead of exercising his jurisdiction and sweeping all of these people out of office, he very wisely adapted his own institutions to the then existing establishments By some six or seven years he had molded the judicial establishment into a very simple form. First, justices of the peace, and, next the county courts, or comon pleas and court of quarter sessions and the orphans' court, consisting of justices of the peace specially commissioned to hold those courts, with an appellate jurisdiction exercised at first by the provincial council, and then subsequently, after 1705, by a separate court known as the provincial court, consisting of five judges not necessarily lawyers, but picked out of the provincial council as being most familiar with local affairs. So we have these county courts exercising the jurisdiction of the common pleas and courts of quarter session and the orphans' court with an appeal to the provincial court.

I will not take the time to run over the legislation passed from 1705 to 1720 and 1756 under the direction of David Lloyd, and so on. But we came to have a well-established system which was maintained up to the time of the Revolution. In the constitution of 1776, if you look at sections 22 to 27 in succession, you will find the supreme court specifically referred to, the court of common pleas specifically referred to, the court of quarter sessions of the peace specifically referred to; the court of oyer and terminer was then introduced because those justices of the peace were commissioned to exercise the privileges and powers of judges of oyer and terminer which, of course, involved capital offenses and felonies which were punishable by death, and the orphans' court. It was not scientifically done, however; the constitution of 1776 is a badly arranged and ill-assorted jumble of principles, sound but not scientifically stated; and the first

constitution that we really had was that of 1790, when Thomas McKean and others went into the convention, trained lawyers, taking the material from the constitution of 1776, and really completed the structure known as our department of the judiciary. Now, I paralelled the language of the constitution of 1790 with the constitution of 1838, with the amendments of 1851, with the constitution of 1873; and the language which we have to-day in the constitution of 1873, which we have changed simply by the introduction of these words relating to the superior court and district peace judges, is precisely the same, word for word, line for line, and punctuation mark for punctuation mark. So that if we sweep that out I want my brothers of the commission to know that they are sweeping away one hundred and thirty years of use of language which has become fixed in the minds of the people and definitely established by decision as to the jurisdiction and functions in the court. If the language had been allowed to remain unchanged, I believe the motion would not be made to strike out and reduce it to the simplicity of the constitution of the United States, which simply puts the judical power in one supreme court and such inferior courts as Congress may from time to time establish. But the introduction of the superior court into this clause, so as to throw the protection of the constitution around that tribunal, and the sweeping away of the magistrates' courts in Philadelphia, and the substitution of a very necessary body to take the place of the judges of the tribunals displaced; the introduction of this has led to the thought that perhaps if we lay our hands on it in the way of modifying the language of this old article coming down from constitution to constitution, we will enable greater simplicity to be introduced into the system and greater flexibility of movement imparted to the legislature in dealing with the organization of courts. I want to say just one word with regard to what strikes me as the danger of enlarging too much the powers of the legislature in dealing with the courts. It is easy enough to say that the constitution of the United States presents a very simple model. So it does. No man exceeds myself in the extent of his admiration of that instrument, than myself. I am a great admirer of the constitution of the United States and of the wisdom of the men who framed it; but I cannot help, both as a lawyer and a historian, but reconize the fact that the conventions of a state framing a constitution for a state have a totally different class of powers to deal with than those exercised by the federal convention. The Consitution of the United States is a constitution of limited power delegated by the people of the United States and assented to by their popular conventions called to ratify that instrument. They had no history behind them. The Continental Congress had no courts, no judges at all. Judicial functions, it is true, were attempted to be exercised through special committees of Congress in cases of prize and capture, in cases of conflict in state lines, boundary lines being in disputes between citizens on questions from differents states, and so on, all leading to a confused jurisdiction, which the Continental Congress was unable to adjust, and hence the necessity for a Federal instrument which lodged that power in some central tribunal which would settle them with authority and finality Hence when establishing a supreme court, the convention having no experience and no precedents and no guide in their minds, simply did the wise thing and said, "We will establish a supreme court, and

let Congress deal with the question of establishing inferior courts." Now, they only established two courts, the district court and court of admiralty, and their jurisdictions, and then time engrafted on it the circuit court system, which soon became obsolete. Congress has never attempted to go any great length in the way of establishing courts, I think for two reasons. First, because the limited jurisdiction of the Federal court did not make it necessary. The jurisdiction mentioned in the third article of the constitution of the United States, distinguishing between original juristiction and appellate jurisdiction, is all contained on a page which only occupies two-thirds of this amount, a very small source of authority, and not calling for any elaborate structure of judical establishment. The citizens of the United States are not very familiar with proceedings in the United States courts. Even members of the bar shrink from entering the Federal courts under the idea that there is some mystery in the proceedure there which they do not understand, and therefore they take in members of the bar who are familiar with those courts to perform perfectly simple duties in trying cases which do not differ in the slightest degree from cases in the common pleas except that they are between citizens of different states arrayed as parties against each other. Hence I think we cannot hold before our eyes the model of the Federal Constitution, for history does not justify it, the extent of the jurisdiction conferred on the Federal courts did not justify it; but when we come to changing the language of the article which has stood since 1790 without change, when we attempt to put within the power of the legislature the remodification and redistribution of jurisdiction, we must understand exactly what we are doing. I only want to point that out.

Now, a radical situation of a similar kind was brought up a few years ago in the state of California. Only two years ago in November last the people of California were called upon to pass on a proposed constitutional amendment submitted by the legislature, which read somewhat as follows: The judical power of the state shall be vested in the Senate sitting as a court of impeachment, in a supreme court, and in such other courts as the legislature may by general law establish. Now, that is precisely the same thing that is suggested here. It contained somewhat as follows: Upon this section becoming effective the remaining provisions of this article other than section 19, whether adopted hereafter or contemporaneously herewith, shall become of the same force and effect as general laws, and shall be subject to repeal or amendment by a general act adopted pursuant hereto. Now, incidentally, this paper, which is the Journal of the American Judicature Society, under date of October, 1917, publishes an article called the "Crisis in California" and quotes this language. The bar of the state appeared to have been startled by the submission of an amendment, the result of which would be to permit the legislature to abolish or alter any part of the state judical system with the exception of the supreme court. The president of the California state bar association undertook to make a great issue of this amendment at a meeting of the association held in September, and then indicates that the general tone expressed by the present was one of apprehension and distrust, and he urged in the strongest terms that the members of the association should consider and discuss the amendment and be prepared to take a definite stand. The matter went

on and the amendment was defeated. The same thing has taken place in Oregon and Texas, indicating that when you attempt to shake, so to speak, the solidity, of a structure which has been built not only on the language of constitutions of age and ripeness, but which have become familiar to the bar and to the people at large, and allow the legislative body, particularly in a state which being clothed with soverign power unlimited save so far as it may be restricted by the language of the state constitution itself, you are putting in jeopardy the independence of that department of the government on which we rely as our sheet-anchor in times of storm, and which we lawyers consider without any undue consideration or without any undue worship on our part as the bulwark of our institutions.

I know perfectly well that a great deal of waste of time, of material and of energy, and confusion of principle and overlapping jurisdiction exists, which ought to be remedied. I agree with that. I have attempted to keep a perfectly open mind so far as I am concerned against any introduction into my own mind of a blind antagonism resulting from conservation temperment and historical research, so that I have not shut out from my own eyes the light that seems to be breaking elsewhere. I have been reading during the last month since our adjournment, and so far as I was able tried to digest these various discussions to see how the matter has been running. It does run somewhat in the line of that extreme proposition which is presented here to-day at the bottom of this first page, page 32, suggested by Mr. Schick, of a unified court, one great court for the entire commonwealth, cut into appellate divisions and into other divisions and into intermediary appellate courts and courts of original jurisdiction exercising in their turn appellate powers over the inferior tribunal which comes in contact with the people. I am not going into that extreme. It is too radical and cannot be introduced now. Neither the bar nor the judges nor the public are educated up to it. Some fifty or sixty years hence we may be prepared to adopt it. But the main feature of the unification, simplification, elimination of that confusion which results both to the public and the bar from a conflict of rules of practice is entirely eliminated, and is then so easily reached by the adoption of what we have already here suggested in the way of unified courts of common pleas in Philadelphia county, as we have done in Allegheny county, and clothed all of these tribunals with power to make their own rules and control their practice and procedure, subject, however, to the central controlling authority of the supreme court whose rules are supreme, the lower tribunals not being deprived of the opportunity of making rules for their own government, provided they are not inconsistent with those laid down by the supreme court. Hence if we follow out the various amendments which are suggested here, that the supreme court shall be clothed with authority to promulgate all rules for the government of the lower courts, you could accomplish a great deal in the way of elimination of these evils which gentlemen complain of, and which they desire to destroy by this general grant of power to the legislature to mould the state judical establishment in any way they see fit. Now, I do not think it is necessary to do it that way. I would, protect this system of courts by allowing them to remain in the constitution as they are.

Why do you cut out of the constitution the criminal courts, of oyer and terminer and quarter sessions of the peace that have always been there as part of the judical fabric of the commonwealth for one hundred and thirty years and more? The amendment would take away the name of the court, both the court of oyer and terminer and the court of quarter sessions of the peace. You do not destroy that jurisdiction, but you leave it in the air as to where it is, and say that until the legislature has acted it still remains as it is now. If you are going to do that, why leave the bar and the public in a state of uncertainty, and the judges themselves? That is the difficulty about the matter. What I covet and what I appreciate as a matter of value in government is stability. We do not want to start a sort of a structure which is built on gelatinous substances in order to make it flexible, and which will act this way and that way like a jellyfish on the surface of any angry sea. We want something like a lighthouse founded on a rock. Although the architecture may be old and the man in the lighthouse may himself have eyes which are dim, yet at the same time he is there until you can put there some man who is fit to take his place. But you do want to tear down that lighthouse and put the safety of the coast and of boats that are putting out to sea to be garded by people who have no experience at all in the dangers of navigation.

Now, I simply want to call attention of the commission to the fact that we can get what is needed in the way of a reasonable amount of unification, and a reasonable amount of satisfactory operation, perhaps an amount of central control from the supreme court if you make them masters of procedure and practice. Judges should have that power, and perhaps they are wiser in framing them because they are skilled experts in that line and are wiser than the ordinary legislature leaving it to a committee of lawyers, the judiciary general, to frame a practice act. The supreme court would unify the practice of the state, and you cannot bring one hundred and fifty judges of Pennsylvania into uniformity of thought on the subject of practice. One judge is enamored with what is familar to him and he does not like what is in the adjoining county, but when the supreme court is clothed with central power you get a successful consolidation of your judical system. Therefore I think it would be an error to strike all out or just leave as decorous memories of the past the court of common pleas and the orphans' court, while you let the courts of quarter sessions and oyer and terminger go. I therefore hope that whatever this commission will do in its wisdom will be done cautionsly and with proper reverence for institutions, and with this further conviction that this judiciary department is the one department the altering, changing or undermining of which would be attended with very great danger.

Mr. PEPPER. Mr. Chairman: Let us consider for a moment just what is involved in the pending proposition. I cannot help feeling that Mr. Carson has been led to overstate the significance of what is here proposed as respects its possible effects on our institutions, and with special respect to the judiciary. Is this not the situation, Mr. Chairman? We have to decide now, once for all, so far as this commission is concerned, of which courts we are prepared to affirm our belief that for the next fifty years they shall remain substantially as they are to-day. Are we not agreed, all of us, or nearly all of us,

that we cannot make that affirmation in the case of the magistrates' courts? I take it that it is a pretty general sentiment in the Commission as evidenced by our action in the early sessions that we are not prepared to affirm that the magistrates' courts ought to be continued as constitutional tribunals.

Mr. CARSON. They are not sanctified by use.

Mr. PEPPER. On the other hand, I think we all agree that some substitution must be made. At an early stage of our deliberations, perhaps somewhat precipitately, we devised a substitution for that and proposed to incorporate a substitute in the constitution. But I fancy the considerations advanced by Mr. Carson will lead us all to the conclusion that it is not desirable that a court that has not even been launched in its experimental career shall be made the subject of constitutional declaration. Very well. Let us assume for the purpose of the present argument that we are going to amend what we did earlier in our deliberations to the extent of striking out district peace courts as constitutional courts. If we are going to leave, Mr. Chairman, all the other courts enumerated in the present section in the constitution, we are driven almost by a sense of decent respect for a worthy and admirable tribunal to include the superior court. There seems to be something invidious in enumerating the courts of the commonwealth in the constitution and leaving out the superior court; and prompted by considerations of that sort we undertook to include the superior court in our section. But on more mature reflection are we not almost all prepared to agree that the superior court is still in its experimental stage? I notice that one of the amendments proposed by Mr. Justice Simpson contemplates the possibility that there may be need for more superior courts than one, or divisions of the superior court sitting in the eastern and western ends of the state. In other words, shall not we be making a mistake if we crystalize by including it in the constitution the superior court precisely as it stands to-day? Very well. If that be so, if we withdraw the peace court proposal from the constitution, let us suppose the amendment we are making withdraws the superior court, and then let us have regard to the fact that the pending proposal leaves in the Constitution the supreme court, court of common pleas and the orphans' court. If we bear that in mind the discussion narrows itself down, does it not, sir, to the question as to what we shall do in the case of the quarter session, oyer and terminer and general jail delivery?

Mr. CARSON. You recall there is civil jurisdiction in the court of quarter sessions.

Mr. PEPPER. I have not forgotten that, and have not referred to them as criminal courts, but referred to them by titles, quarter sessions, oyer and treminer and general jail delivery, the jurisdiction being for the most part criminal, but, as Mr. Carson points out, to some extent a civil jurisdiction. May I observe with regard to those courts, Mr. Chairman, that they are not in the proper sense of the word courts, but they are virtually functions exercised by judges who are primarilly judges of the common pleas or district courts? I do not mean for a moment to question, no one would desire to do that, and I least of all, the precise accuracy of Mr. Carson's statements; but it will not be forgotten that to eliminate these three courts from the Constitution does not involve the disturbance of the tenure of any judicial officer. There is no attack made upon the

tenure of any judicial officer. It is merely a question of how we shall in the future redistribute those functions of the judges of the court of common pleas which are not now discharged by them in the courts of common pleas but which are discharged in the oyer and terminer, quarter sessions and general jail delivery. That narrows the discussion very much, and I am sure Mr. Carson will appreciate how narrow the issue has now become.

Mr. CARSON. Mr. Chairman: I am rather grateful for it.

Mr. PEPPER. Mr. Chairman: It seems to me we have come to a point in our discussion where we see that all that is involved is a determination on our part whether or not we are prepared to say that the precise jurisdiction as at present existing in the court of quarter sessions general jail delivery and oyer and terminer shall remain for another fifty years. My own belief is that we have about come to the time when a revision of the distribution of jurisdiction between those bodies is desirable. I am not at all sure but that a single court with exclusively criminal jurisdiction and a delegation to courts of civil jurisdiction of those parts of the jurisdiction of the quarter sessions that are civil is not a thing greatly to be desired. In any event, it is a matter about which there is room for intelligent difference of opinion. Let us give opportunity for that difference of opinion to develop. Let us say we will not disturb the sheet-anchor. Let us say we will not do anything which in the most conservative mind can raise apprehension that we are shaking the institution of the judiciary. Let us say we will leave in the constitution the three courts with respect to which we are all prepared to affirm that they should remain in the future as in the past, the supreme court, the common pleas and orphans' court. Let us recognize to the full that we are not prepared to affirm the permanence in their present form of the superior court, the magistrates' courts or the justice of the peace. And with respect to the other three courts shall we not be wise if we affirm that there is a jurisdiction which is necessary, which must be vested somewhere, but that we are not sure that it must be vested just where it is? Therefore we withdraw the language which has crystalized its place in the constitution. We leave it where the people of the state can deal with it intelligently and conservatively, and we do this without trenching upon the tenure of any judicial officer, because if the pending proposition passes every judicial officer who now holds his office in any court in the commonwealth will retain his office and his tenure absolutely unaffected saving only the case of the magistrate. I think therefore, sir, that upon analysis the proposition is not nearly so radical as might at first be supposed. In fact I believe myself that it is not a radical proposition. I think it is a proposal to clear the air, a proposition to open the way for a study as to how we can redistribute jurisdiction now vested in the common pleas, quarter sessions, oyer and treminer and general jail delivery.

The CHAIRMAN. May I ask Mr. Pepper where there is a definite proposition working out the jurisdiction of the three courts?

Mr. PEPPER. Mr. Chairman: That resolution which was offered and passed at the beginning of our discussion read, that our discussion should proceed upon the understanding that when we finish our discussion on article V we shall have included in what we do the enactment of a provision, subject to the provisions of the article,

that all courts existing at the time of the adoption of the constitution shall remain as now established unless and until changed, altered or abolished by law, so that the matter will stand precisely as it does to-day, but we shall be there dealing with the mixed jurisdiction which at the present time seems to be somewhat confused.

Mr. KELLY. Mr. Chairman: It seems to me it is rather radical to take all the criminal courts we now have in the constitution out and give to the legislature the power to abolish and wipe out all criminal courts. If you take the quarter session, oyer and terminer and general jail delivery courts out of the constitution then we have no criminal courts except by saving provision of the latter part of this resolution, "all courts existing at the time of the adoption of this constitution shall remain as then established until altered or abolished by law." Of course, we will retain the quarter session, oyer and terminer and general jail delivery until the legislature shall see fit to abolish them, but it would make it possible for the legislature to abolish all those courts without providing any substitute for them, so that the state of Pennsylvania would be absolutely and entirely without any tribunals in which to try offenses against the criminal laws of the commonwealth. I do not say that would happen but it could happen, unless I am very much mistaken as to the import of this language. If we retain in the constitution these criminal courts, or if we retain some criminal courts in the constitution, give them whatever name you please, it could not happen; but if we take out of the constitution all courts which are criminal courts and which have criminal jurisdiction, this saving clause might not necessarily save us from the situation of having a legislature abolish these courts by repealing the act of assembly, and we would have no criminal courts at all in the state. It strikes me that this is rather radical and rather dangerous, and we should not take the quarter sessions, oyer and terminer and general jail delivery out of the constitution unless at least in the same breath we substitute something else for the purpose of trying offenders against the criminal law. It would be impossible that the thing I mentioned could happen, but it should not be impossible. Personally I also would retain the superior court in the constitution. I do not know that it makes any particular difference. The superior court has been in existence twenty-five years, and I do think that it has gotten past the experimental stage. Perhaps I am wrong about that; but whether I am right or wrong, I feel very strongly on the other proposition that it would be a very radical thing to take all the criminal courts out of the constitution and make it possible for the legislature to abolish all criminal courts, so that we would have no place where criminals could be tried.

Mr. FOX. Mr. Chairman: I have listened with a great deal of interest to the very ingenious analysis which my friend, Mr. Pepper, has made of this proposition. His argument is plausible, as his arguments always are. If I correctly apprehend his thought in connection with this proposition, it is that the superior court is still in the experimental stage, and although it is a good court, we ought not now to incorporate it in the constitution, and that therefore in order that their feelings might not be hurt we take something else out of the constitution as a sort of a palliative. Now as I view it, it would be a mistake if we were to depart from the original draft

which we have prepared. I agree with Judge Kelly that the superior court is no longer in the experimental stage. It is true, Mr. Justice Simpson has suggested it may be possible we may need an additional superior court, one in the eastern section of the state and the other in the western section of the state, and by the same token Justice Simpson indicates to us that he thinks the superior court has come to stay, and therefore we ought not drop it from the constitution, as I conceive it. The superior court, as we all know, originally was a tribunal created by the legislature because it was urgently needed to relieve the volume of work that had accumulated in the supreme court, and it was intended that it should take jurisdiction in cases where the amount involved was small. From time to time, however, the importance of that court has increased until now, with the appeals from the decrees of the public service commission, it is rendering a very important public service aside from that contemplated in the passage of the original act. It is passing upon questions of great moment to the people of this commonwealth, particularly to the public service corporations coming within the jurisdiction of the public service commission, and it seems to me that we ought to do everything we can that will tend to dignify that court and increase its authority. In the same way I think it would be a very great mistake to leave the criminal courts to the tender mercies of the legislature. As Judge Kelly has said, it is probably true that no legislature in Pennsylvania would ever go so far as perhaps to abolish the criminal courts of this commonwealth, but I have a great regard for the argument which has been made by ex-Attorney General Carson as to the history of these criminal courts, and the fact that they have actually been in existence since 1790. I agree with him that at this particular juncture in the history of the commonwealth and the world's affairs we want to do everything we can to give stability to the courts. The members of this commission probably all know that within less than a week ago an attack was made upon the Supreme Court of the United States in the halls of Congress, and if we take these tribunals out of the constitution there is no telling what proposition might arise in the legislature. I hope, therefore, that the amendment which has been proposed by Mr. Pepper will not prevail.

Mr. GORDON. Mr. Chairman: In my own mind I rather back and fill on this proposition. I was a member of the judiciary committee which reported the amendment as it first appeared. The present amendment which Mr. Pepper has advocated was suggested to me, and he and others spoke with me about it, and at times I thought there was merit in it, and so late as after breakfast this morning I even then in the complacency of that hour did not see any danger in the proposition, and it loked rather good to me. But I have listened to the discussion to-day, and as I have heard the very able words of my colleagues on the committee, Mr. Carson, and the argument of Mr. Pepper, and Judge Fox's argument, I have come to the conclusion that it is not a defensible proposition as it is now presented. I do not want to be fundamental in the matter, but we are creating an executive, a judical and a legislature form of government for this commonwealth. That is all this constitution is, the creation of an executive, a legislative and a judicial form of government. When we had the executive department before us this morning, probably yesterday afternoon, there were amendments, for

instance, like this: It was proposed to drop the lieutenant governor of the state as being an unnecessary officer. That was discussed, and we retained the lieutenant governor. We did make a change in making the secretary of the commonwealth an appointive officer instead of an elective officer.

Mr. CARSON. The secretary of internal affairs.

Mr. GORDON. Thank you. But we retained in its entirety, so far as its constituent parts were concerned, the initial clause of the article on the executive department, which recites: "The executive department of this commonwealth shall consist of a governor, lieutenant governor, secretary of the commonwealth, attorney general," and so on through the list of the proper executive officers. We did not leave it, so far as those officers are concerned, to the future whim of the legislature as to who should comprise the executive department. We fixed those things, and if this constitution is adopted through the decades which it will subequent pass, the executive department will be a fixed department, having a govenor, lieutenant govenor and the others named in this constitution. It will be for the legislature to create other departments if it chooses. It probably can create execute agencies, but the fundamental constituency of the executive departmeent is fixed in the constitution. We have the legislative department before us now. Nobody proposes to abolish, we will say, the senate, in which there are some very excellent statesmen and philosophers who think it is as useless as a lieutenant governor, and to have one chamber. The tendency of modern thought is for having one chamber and that the senate is a destructive veto body that is in the way of progress, but there was no proposition to alter that. It stands unchanged, the house and the senate, with its powers defined. Now, we have come on to the judicial department of the government. Is there one department anywhere which should have definiteness as to its constituent elements as much so as the judiciary? If it is important that the law be known and fixed rather, probably, than that it be perfect, it is certainly equally as important that the courts that administer justice shall be to a large extent fixed and determined. For one hundred and thirty years, Mr. Carson has pointed out, the supreme court, court of common pleas, court of oyer and terminer and general delivery, orphans' court and justices of the peace have all existed as the foundation of the judical system. Now it is proposed to add something with respect to the judiciary, the third department of government. It is proposed to make a change. I might probably ask the gentlemen who desire this thing why they desire it, and what the purpose is in making the change. Is it an economic one? Is it to reduce the number of courts? Obviously not, because it was suggested by Mr. Pepper that many of the functions now exercised by the court of common pleas might be imposed upon other new courts and therefore it is not an economical idea. It is not proposed to take away the powers of the courts to make it less costly. What is the abuse sought by those who want to change the judiciary department of the government? It has been suggested that there has been confusion and uncertainty. I doubt that. But if there is, I imagine that the confusion will result when the fixed power is taken out of the constitution and left to the legislature, will be thereafter administered by this court or that court, by one or many courts, by courts learned in the law or not learned in the law, according to the will of the legislature, who may make a court today and strike it down tomorrow, may

compose it of many or few. What is the judicial function eliminated by Mr. Pepper's amendment? Well, first, it is the superior court. When I say taken out, I mean to say that they are no longer a permanent, fixed part of the judicial system. The superior court. The superior court is left to the legislature, which may continue, abolish, change it or do as it pleases with it and its jurisdiction. Courts of oyer and terminer. Those are criminal courts which try a higher grade of crime, as to which there are certain important rights of the citizen, many things with respect to the drawing of juries and other things which they have to do with fairness and impartiality. Courts of oyer and terminer. These courts try homicide and grave felonies, and that court is no longer a fixed part of the judicial system, and a legislature of the future may do with it as it pleases, create separate bodies, split up its jurisdiction, and do absolutely anything it pleases with those courts. Courts of general jail delivery and quarter sessions and the peace. These exercise the power to dispose of criminal offenses and exercise other powers, and they too are given to the legislature. After that justices of the peace. Justices of the peace which are in existence under the old system are abolished as permanent parts of the judicial system. The magnitude of that is staggering. It leaves to the legislative department the determination of the question whether the origin of all judicial proceedings, of all criminal proceedings, shall be in justices of the peace, or shall be in a multiplicity of courts composed of many judges, or shall be in separate persons traveling from district to district, all the powers of the justices of the peace to be in the hands of the legislature to be disposed of as it pleases. What can be thought of a judicial system established by this body which leaves such vast powers uncertain and dependent upon a political body—and I do not use that word offensively, because the legislative body must necessarily be a political body, it is a body which changes according to the desires of the people, and acts upon a multitude of questions, some purely political, some economic, some financial, and God knows what—and it is proposed by this amendment to put the judiciary system of the state in its keeping.

Now, Mr. Chairman, probably there might be something said for it if it were not for the fact that under the existing law which established the judicial system, composed of these various courts now in it, the legislature is given power to add others and it may from time to time now create any court which the exigency of public business requires, and that is a wise administration of the judicial system of the commonwealth, to fix its principal courts, holding on to those which have been long tried and giving the legislature power to create others from time to time if they should see fit.

Mr. Chairman. I suppose that as to the views of the majority of the people of this commonwealth the part of the judicial system which comes nearest to them is the justice of the peace. Those who are not concerned with property in a large extent, but those questions which touch personal rights are the questions which concern the justices of the peace. These important officers and their power ought not to depend upon the say so of the legislature, and the judicial system ought always to be open to improvement and to change. But how, when any why? By amendment to the constitution. If it is desired to take away from the court of common pleas criminal jurisdiction, it can be done by an amendment to the constitution. It would take

a few years, it ought to take a few years, before the judicial system could be changed in so important a matter. But in all other things the legislature has power to give relief at any time with respect to judicial administration. And what is to be accomplished, what is sought to be met and remedied by this suggested change? I have not heard. It cannot be that the judges at present are too much employed; it cannot be either that they have not been industrious enough; it cannot be either that they are not competent enough; and God knows that it cannot be that they are not numerous enough throughout the commonwealth . Therefore, neither in the matter of efficiency nor economy, nor on any other proposition as yet presented, has there been given a reason for this fundamental change in the constitution of the judiciary and substituting something in its place, and to leave to the future and to a varying body like the legislature the right of determination of what shall be the judicial system of the commonwealth.

Mr. REED. Mr. Chairman: Nobody can add anything of importance to what the last speaker has said, and I compliment him this time upon his evident sincerity. The only reason I rise is to register my dissent to the motion. Now, somewhere in the Bible it is said that we shall hold fast to that which is proved. We have a system in this state that runs back beyond Mr. Carson's recollection, and no good reason has been shown for its change. I take it that the judicial system of this state in the main is very good, though there are some things in the constitution that could be changed, for instance, the consolidation of the courts of Philadelphia. Now, that is the restlessness that has attacked some of our friends and has led to a general overhauling of the system of courts, and nothing is suggested in its place that is any better than that which we have today. I have not made up my mind since the last meeting, but possibly we were a little radical on the question of the justices of the peace. They are the poor man's court, and the poor man can get into them and get some where as long as he keeps below five dollars and thirty-three cents. But with some sort of regulation of the justice of the peace, I think he is a necessity. However, we have not come to that as yet. I do not think we ought to change any of the constitutional officers, the naming of them, and I think we should add for its own dignity and permanency the superior court. With that exception I would make no change in that first section. If it becomes necessary that that court should be divided into two divisions, or some judges added to it, and that under its own regulation it sits in sections in different parts of the state, that is a subject of legislaion or court rule. I remember when the state of New York, under the progressive and modern thought of that time abolished all its laws relating to practice and largely related to rights and jurisprudence and adopted a code which was constructed by the most learned and skillful lawyers of the day. I have forgotten how many, I did know how many, volumes of reports have been published of the New York practice reports, defining what that code means. We have built up in this state a system of courts and judicial proceedings which every lawyer understands, and which suit our people, and until it is shown that there is same serious necessity for it I am not disposed to see it changed.

Mr. PEPPER. Mr. Chairman: I should like to add an amendment to the pending resolution, and it is for the purpose of bringing the minds of all of us as near together as may be in order that when we vote we may vote upon as clear-cut issue as it is possible to have before us.

The CHAIRMAN. Do you offer that as a substitute?

Mr. PEPPER. Mr. Chairman: I offer this as a substitute amendment:

"The judicial power of this commonwealth shall be vested in a supreme court, in courts of common pleas, in orphans' courts, in the courts of criminal jurisdiction as now established or as they may hereafter be modified by law, and in such other courts as the general assembly may from time to time establish."

If this is seconded I will say one word in explanation.

Mr. FISHER. Mr. Chairman: I second the substitute.

On the question.

Will the Committee agree to the substitute?

Mr. PEPPER. Mr. Chairman: If that amendment prevails, and I say it is with special reference to the question which Judge Gordon has in view, three things will be accomplished. Whether or not all three or any one of them is worth accomplishing is a question; but three things will be accomplished. One will be that we shall have eliminated from the tentative draft the district peace courts which at present appear there, and which I for one think were placed there precipitately without adequate consideration, and with respect to which I am unable to see the applicability of Judge Reed's scriptural quotation. It does not seem to me we are holding fast to that which is good, at least not approved or proved to be good, if we put into the constitution experimentally a tribunal of the sort that we have hastily worked out. The second thing we shall do will be to eliminate from our tentative draft the superior court. Judge Fox, I think, misunderstood me. I did not say that in order to justify the removal of the superior court from the constitution, we should eliminate some other things that ought to be there. I said if you are going to follow the plan of enumerating all courts in the constitution, old courts, middle-aged courts and experimental courts, it seemed to me it was invidious to leave out the superior court. I am prepared to advocate the omission of the superior court in our tentative draft, because I do not think we have reached finality in the experiment with courts intermediate between the county courts and the supreme court. I do not believe the superior court will last in its present form for fifty years, and I do not see if we are contemplating a change why we should drive ourselves to put a thing into the constitution and then proceed hereafter by constitutional amendment to change it. The three things are these: First, as I see it, it will eliminate the experimental peace district courts from our tentative draft. In the second place, it will eliminate the superior court from our tentative draft, for the reasons given. In the third place, we shall in no sense eliminate one or more criminal courts from our judicial system. It would leave us free to reconsider the distribution as between the three courts of quarter sessions, over and terminer and general jail delivery, as respects which I think it is a bold man who will say that they will last in their present form for

another fifty years. Those are the things this amendment seeks to accomplish. It is for the commission to say whether any one or two or all three of them are worthy of the effort.

Mr. CARSON. Mr. Chairman: May I ask for information before the vote is taken?

The CHAIRMAN. Certainly sir.

Mr. CARSON. Mr. Chairman: Suppose that is negatived, does the vote then come up on these questions as to whether we shall include the superior court or whether we shall leave this out? Will it come up regularly so that we can pass on the other suggested amendments here?

The CHAIRMAN. No, sir.

Mr. CARSON. Mr. Chairman. If that is defeated?

The CHAIRMAN. If it is defeated, then any amendment is germane, or this substitute could be maintained, of course.

Mr. GORDON. Mr. Chairman: May I say a word about district peace judges to whom Mr. Pepper has made allusion? The existing constitution provided for magistrates' courts in Philadelphia. The desire was to abolish those courts because they have proven not only inefficient but most offensive to the citizenship of Philadelphia, and we could not well consider the abolition of those courts without supplying another court to take their place. It might have been the creation of justices of the peace, but the committee choose to think that the district peace judges elected in separae districts would be probably the sort of primary magistrates to have in the city of Philadelphia, and the committee desired to make those courts permanent. Speaking for myself I am willing they should be regulated to some other part of the constitution, if the magistrates' courts are adopted and if they are established for the present, leaving their continuance to the legislature.

The CHAIRMAN. You are satisfied to have the provision as to district peace courts go out if the provision as to magistrates' courts goes out?

Mr. GORDON. Mr. Chairman: I do not desire to make them permanent.

Mr. STEVENS. Mr. Chairman: For the purpose of eliminating a consideration in detail of all the amendments, I propose as an amendment that we adopt section 1 of article V as reported by the committee.

The CHAIRMAN. The chair would like to make an amendment to that, that is, to strike out the words "district peace judges."

Mr. STEVENS. Mr. Chairman: I accept the amendment.

Mr. REED. Mr. Chairman: Then you get back to the same place if you amend Mr. Pepper's motion.

The CHAIRMAN. It will work out by either amending Mr. Pepper's motion and adding the superior court and continuing the criminal courts as they are.

Mr. GORDON. Mr. Chairman: I have no objection to that if it be understood that this body before it completes it's work will establish some office in the place of the magistrates' courts in the county of Philadelphia.

The CHAIRMAN. That is my entire purpose.

Mr. CARSON. Mr. Chairman: You want that in the constitution.

The CHAIRMAN. Then, Mr. Stevens' motion is to adopt section 1 of article V as it is in the tentative draft, with the words "district peace judges" eliminated.

Mr. FISHER. Mr. Chairman: May I presume to raise a question of a point of order? That is adopted, and all we have before us now is a motion of Mr. Pepper. Whether or not we did adopt it, it will not hurt to readopt it.

The CHAIRMAN. It was adopted in the preliminary draft with the district peace judges in. To the pending substitute offered by Mr. Pepper, Judge Stevens offers as a substitute the section in the preliminary draft as adopted with the words "district peace judges" left out. The question is on the substitute proposed by Judge Stevens.

Mr. REED. Mr. Chairman: That is an amendment to Mr. Pepper's.

The CHAIRMAN. It is a substitute for all pending motions and the secretary will read it as it is.

The secretary then read the substitute as follows:

Section 1. The judicial power of this commonwealth shall be vested in a supreme court, a *superior court*, in courts of common pleas, courts of oyer and terminer and general jail delivery, courts of quarter sessions of the peace, orphans' courts, and in such other courts as the general assembly may from time to time establish.

Mr. PEPPER. Mr. Chairman: As we seem to have launched on the business of introducing substitute for substitute, I suppose I can offer a third substitute. I move the substitution of the language of the constitution of 1874 on this subject as it stands.

The CHAIRMAN. I think we will get into inextricable confusion. The chair rules that Judge Stevens' substitute is not now in order and the only issue before the committee is the substitute proposed by Mr. Pepper.

Mr. REED. Mr. Chairman: I move to amend the substitute by inserting the words "superior court."

The CHAIRMAN. Is that accepted?

Mr. PEPPER. Mr. Chairman: No, sir.

The CHAIRMAN. The chair hears no second to the motion, and the motion therefore drops.

On the question recurring,

Will the committee agree to the substitute proposed by Mr. Pepper?

It was not agreed to.

Mr. REED. I move to amend the preliminary draft by striking out the words "district peace judges."

Mr. Stevens. Mr. Chairman: I second the amendment.

On the question,

Will the committee agree to the amendment?

Mr. REED. Mr. Chairman: That is with the understanding as Judge Gordon says that nothing is going to be done for the city of Philadelphia.

The CHAIRMAN. It is the understanding of the chair that this is to be taken care of subsequently by a provision providing for district peace judges.

Mr. PEPPER. Mr. Chairman: Gentlemen, let us have no misapprehension. We certainly cannot at this stage of our deliberations seriously contemplate the formulation of a system of courts substitutionary either for the district peace courts or for the magistrates' courts. It seems to me we are contemplating quite a serious crisis in the work of the commission.

The CHAIRMAN. May I just offer this suggestion that was in my mind? My wisdom may not at all impress the members, but my thought was that if we change the title of district peace judges to justices of the peace we would have worked out a system that has its foundation in the common law and would meet every exigency that would be created by striking magistrates out of the constitution. I am not wedded to the terms at all.

Mr. GORDON. Mr. Chairman: I am satisfied with that.

The CHAIRMAN. The proposition was not to engraft district peace judges as constitutional courts.

Mr. GORDON. Mr. Chairman: They might be created by the constitution and express power given to the legislature later to change or abolish them at any time.

On the question recurring,

Will the committee agree to the amendment?

The amendment was agreed to.

The secretary read the amendment submitted in writing by J. Lawrence Wetherill, Esq., of Philadelphia, as follows:

Amend by striking out on lines 3 and 4 the words [district peace judges].

Amend further by adding at the end thereof the following: *The general assembly shall not create any new court which is not a court of record.*

Mr. CARSON. I would like to call attention to the effect of the adoption of Mr. Wetherill's amendments to sections 11 and 12 printed on pages 43 and 46.

The CHAIRMAN. You move the adoption of this suggested amendment?

Mr. CARSON. Mr. Chairman: No, sir.

The CHAIRMAN. Then there is nothing before the commission.

The chair hears no motion to adopt this suggested amendment, and therefore it will be dropped.

The secretary read the amendment submitted in writing by Hon. R. A. Kennedy, President judge, Allegheny county court, as follows:

Amend by inserting on line 3 after the words "orphans' court" the words *county courts, municipal courts* on line 4 before the word "may" the words *has heretofore or*, and after the word "may" the word *hereafter*.

This amendment was not called up.

The secretary read the amendment submitted in writing by Robert P. Shick, Esq., on behalf of the Constitutional Club, Philadelphia, as follows:

Strike out the entire section and substitute therefor the following:

The judicial power of the state shall be vested in one supreme court and in such inferior (or other) courts as the legislature may from time to time ordain and establish; provided, however, that the legislature shall have power and authority to place the judicial power of the state in a single general court of judicature, in which the supreme court shall be a division of the court of appeal and shall have all the power and authority, and shall be organized and constituted as is by this constitution provided for the supreme court, but until otherwise provided by the legislature in a manner not consistent with any of the provisions of this constitution, the judicial power shall be vested in and exercised by the system of courts inferior to (or other than) the supreme court provided by law at the time of taking effect of this constitution (or amendment to the constitution).

This amendment was not called up.

The secretary read the amendment submitted by the chair, as follows:

Amend by striking out on lines 3 and 4 the words [district peace judges].

The CHAIRMAN. This suggestion has already been acted upon, and the suggested amendment will therefore be dropped.

The secretary read the amendment submitted in writing by Hon. Alexander Simpson, Jr., of Philadelphia, as follows:

Amend by striking out on line 2 the words [a superior court] and by inserting in lieu thereof the words *one or more superior courts*, and by striking out from lines 2 and 3 the words [courts of oyer and terminer and general jail delivery] and inserting in lieu thereof the words *criminal courts*.

Mr. FOX. Mr. Chairman: Have we not already passed that?

The CHAIRMAN. It would seem so to the chair.

There being no motion to call up this suggested amendment, it will therefore be dropped.

The secretary read the amendment submitted in writing by James Collins Jones, Esq., and Owen J. Roberts, Esq., of Philadelphia, as follows:

Amend by striking out on line 2 the words [superior court], on lines 2, 3 and 4 the words [courts of oyer and terminer and general jail delivery, courts of quarter sessions of the peace] and on line 4 the words [district peace judges].

The CHAIRMAN. As the chair views it the subject-matter of this suggestion has already been acted upon, and the amendment will therefore be dropped.

The secretary read the amendment submitted in writing by A. Leo Weil, Esq., representing the Voters League, Pittsburgh, Pa., as follows:

Amend by striking out the words [district peace judges].

Amend further by adding at the end thereof the words *Until otherwise provided by the general assembly the offices and jurisdiction of justices of the peace and aldermen shall remain as now established by law.*

The CHAIRMAN. The subject-matter of the first amendment having already been acted upon, this amendment will be dropped.

The chair hears no motion to adopt the second amendment, and the suggestion will therefore be dropped.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE V, SECTION 2.

The committee of the whole proceeded to the consideration of section 2 of article V and suggested amendments.

The secretary read the section and amendment submitted by Hon. Robert von Moschzisker, Philadelphia; Hon. Russell C. Stewart, Easton, Pa.; James Collins Jones, Esq., and Owen J. Roberts, Esq., Philadelphia; Hon. Alexander Simpson, Jr., Philadelphia; the Pennsylvania State Grange and the Chairman, as follows:

Section 2. Supreme Court.

1 The supreme court shall consist of nine justices learned in the law, who shall
2 be elected by the qualified electors of the state at large. They shall hold their
3 offices for the term of twenty-one years, if they so long behave themselves well,
4 but shall not be again eligible. The justice oldest in commission shall be chief
5 justice, and thereafter each justice whose commission shall first expire shall in
6 turn be chief justice.

Strike out on line 1 the word [nine] and insert in lieu thereof the word *seven*.

Mr. FISHER. Mr. Chairman: I move the adoption of this amendment.

Mr. ENGLISH. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. GORDON. Mr. Chairman: I note the names of the numerous gentlemen who are the proponents of this change to strike out the word "nine." I have noted the fact in the newspapers of the state that there has been opposition to enlarging this court to nine, and I know the fact that the judges of that court do not wish their number to be increased to nine. I think that probably most of the subordinate judges and the supreme court, so far as their personal desires and inclinations are concerned, have been exercised to create a strong body of opposition to the increase of the court from seven to nine. There has also been some rather startling opposition from certain other quarters, not professional, and it has been said, why create new offices? Why create two new judges at the expense of twenty-five thousand dollars? And it has been opposed from the popular cry against the creation of new offices.

As I am responsible for the introduction of this clause into the constitution, I take the liberty of expressing my views fully upon the subject. I want to say first that I did not offer this to please the supreme court. I offered it with full knowledge that they would oppose it. I did not offer this to please those bodies of sentiment that would be likely to be affected by the personal wishes of the supreme court judges. If there is one thing which characterizes a judge who has continued a considerable time in office, it has been his satisfaction with his work. I believe that criticism of the work of the court proceeds from the forces of unrest, from discontent, and the bar is not as a general thing, unless the issue is a very fundamental one, and arises to the dignity of a great moral issue, the bar is not likely to oppose the personal wishes of the supreme judicial tribunal of the commonwealth. I do not know what reasons Judge von Moschzisker and the other judges have for not desiring nine judges in that court. I heard it stated that the court did not feel it would be necessary and that they can perform their duties without the addition of two other judges. Well, I do not know whether that is true or not, but I want to state this fact about that court, and every practitioner in it will verify what I say. The supreme court sits most of the time in the county of Philadelphia. It is composed of seven judges, and after about the first ten days of its term two of the judges absent themselves from that court with persistent continuance until the end of the term some time in May, and as a matter of fact the great body of litigation in the court of last resort is heard by five judges. The explanation given for this absentation of two judges, and it might occur most of the time when they are in session, is that the other judges are preparing opinions in cases that have been decided, and also probably that they are entitled to some rest from the attention of listening and not talking back for many weeks at a time. All this does not look as though the court had a surplus of judges so far as the transaction of business is concerned. If, therefore, the judges of the supreme court put it on the ground that they do not need two additional judges to transact their business, I answer that if they

had these two additional judges, we could always be sure of having seven judges of the supreme court sitting to hear the arguments which the litigants and bar are entitled to have. Now, I would not expect a court of last resort, composed of seven judges, unless pressed by a volume of duties, and unless the health of the judges were so affected that their doctor's bills were becoming large, I would not expect them to ask for two additional judges. They have a notion, most of them, that their dignity is preserved in accordance with the smallness of their number. I think that is the general idea of the judges. Those judges, I grant you, therefore, are not pressed with labor. We created the superior court in order to relieve them, but that was not the reason I wanted two additional judges. This is the reason: The one department of the government that is under the severest censure these days is the judiciary, and most of the discontent with government is discontent with the judiciary. Disguise it as judges may, and close their eyes to it as members of the bar may, the great complaint against government today is against the branch which that administers justice. There is a belief that they are too near to those who enjoy vested privileges. There is a belief at their training is too conservative. There is a belief that the courts are too aloof from the poor man. We have made some trifling endeavors in this projected constitution to bring them nearer to the poor man by relieving him of the costs and giving counsel free, but as our courts as no other courts of the world, give the power to declare an act of the legislature unconstitutional and thus strike down a consummate act of a coordinate branch of the government, and because courts so often strike down acts of the legislature as unconstitutional which have in view the redress of some public wrong with respect to labor or the poor or the industrial classes, and because of that and other things which I need not refer to, which may be well or illfounded, the courts are not believed to be near to the people. It is not believed that it is easy for public sentiment even to stand with it or permeate into the judical system if it comes down to be heard there. Now, I do not believe that increasing the judical body opeens the door any wider, but I say the changes are in favor of it. To make this court nine instead of seven would be in accordance with all precedent. The Supreme Court of the United States has nine judges where formerly it had seven. As I think reference was made when I last spoke upon this subject, it was in the heat of civil conflict or at its close that the Supreme Court of the United States was changed from seven to nine, and the reasons for it were various, some not creditable to the appointing power, but anyhow that court was made nine judges. The court of last resort of the state of New York is composed of nine judges. The court of last resort of the state of New Jersey is composed of nine judges. When we were hearing general discussions on this proposition I asked a member of the bar why the courts of last resort were larger than the courts of first instance, and he said he did not understand the question, and when I repeated it he said, "Well, it is historical," and he said he did not know any other reason. Well, there is a reason for making courts of last resort more numerous than the courts of first instance. It is perfectly obvious that there is a belief than in many minds there is wisdom. It is because courts of last resort must always have their rulings respected by the court below. The bar knows and the public knows,

and we will all ultimately come to know, that a tribunal in which there is a number of minds will pass upon a question and a decision will come down which will bind the judiciary of the land, and the fact that there are seven judges to-day in the supreme court is the argument for a number of minds in that court, whether it is seven or five as before the existing constitution, or whether nine, as I would like to have it hereafter. There is a necessity for a number of minds in passing finally upon questions of law to cover the whole commonwealth. Now, why should this court be increased to nine? As I said, paralleling the fact that the United States and the great commonwealths are all in favor of it as a general proposition, even five judges are a majority of nine. I think a majority of nine is more likely to be right than a majority of seven or four. They all may be wrong; they have reversed themselves sometimes; but if two judges oppose in the present court, we only have five in favor of the opinion, we may have a decision with only four. If this court was composed of nine judges, if two dissented there would remain seven judges to determine what the law of the state of Pennsylvania was for the gudiance of all men. I say it would probably not much decrease the crticism of judges, but I say it will help to do it, because there will be more frequent changes in the court, and that is desirable, notwithstanding the necessity for the law being fixed and certain. It is also a fact that where a court is composed of plenty of judges who have terms of twenty-one years, most of whom grow to a venerable and patriarchal age before leaving the court, it is an extremely desirable thing in that new minds, permeated with the spirit of the age, which means the legal spirit of the age as well as the political spirit of the age, should come into that court. I heard one of my colleagues almost rebuked by another of my colleagues in the discussion here one day because he advanced a proposition so new as that poor suitors should get justice without paying for it and that the state would pay the costs. That seemed so new and startling that one gentleman thought my colleague had lost his wits or he would not have presented such a proposition. That is an illustration of how new ideas may be even in conservative minds. Here it is important that the court of last resort, stabilized by twenty-one years of service, stabilized by the fact that most of the gentlemen of that court go upon it after mature years, and changes are few, very few, it is important that that court should be numerous, in fact, that it should be constantly receiving new thought and impulse, new views on legal questions, that is it should have some minds in it that look toward the rising sun and not toward the setting sun always. I do not think that it is creditable to the members of that court that they should oppose this suggestion. I know all of the members of that court personally, I am obliged to argue my cases before them, and therefore I know they are all touched intimately by this proposed change, and they do not desire it. Friendly as I am with all of them, and intimate as I am with them, I do not hesitate to say that their voices should be silent at this moment and that this commission should be left without any protest from them as to the enlargement of the court, if the people desire it. It is not their pleasure, it is not their will, it is not their idiosyncracies that are to be considered at all, but it is a question whether the court of last resort, being in effect the law-

making power, being nomially the law-declaring power, shall in this day be opposed to the number of persons which will give to it responsiveness of thought and the viewpoint of the age.

Mr. CARSON. Mr. Chairman: When this matter was under discussion before there seemed to be some expressions of surprise that in the statement which I made as chairman I introduced the thought that possibly seven judges by chance elected from a limited portion of the state did not represent entirely the great and varied industrial interests of the state, and I explained at the time that I did not mean that the judges should represent districts in the geographical sense in the way in which a member of the legislature would do, but during the past fortnight or more in which I turned over a great many pages relating to judical reform and methods of constituting courts for different parts of the Union I find that I was not as far astray as the gentlemen supposed. I find here not only a map of the way in which the great state of Illinois divided into judical districts, seven in number, judges to the supreme court, which is their court of last resort, being chosen simply from those seven districts, although they land in the court representing the state at large and not the district that elects them. I find moreover in the draft of the suggested form of constitution which has been prepared for the judicial department by the American Judicature Society and which is a draft which they say will fit any part of the Union at the pleasure of those using it, like one of those little ready-made bungalows which you can put on a street car and set up on the edge of a cliff, or in the middle of a meadow, or any place that the fancy of the owner dictates, and they suppose therefore that it will be acceptable to the people of any locality irrespective of their history or past. That divides discussion of the subject into what they call judical geography, and they state the view very much with the same purpose in mind, though not in the same persuasive way that Judge Gordon has done. The object is to bring to the decisions of cases in the court of last resort to many minds to look at judical subjects from different points of view, so as to get a composite result which fairly represents the judicial wisdom of the commonwealth. The states, according to that, is divided into three groups, one group of states, consisting of Illinois, Mississippi and Louisiana, divided into districts, and the voters of each district elect one or more judges to the highest court in the state; in another group of states, consisting of California, Indiana, Kentucky, South Dakota, the state is divided into districts, one judge is elected from each district by the voters of the state at large; and in the third group of states, where we are classified, the judges to the higest court are elected from the state at large by the voters of the entire state. I observe that one of the amendments suggested at a later stage, is that no law shall be held unconstitutional by the supreme court unless at least six justices be of that opinion. In a tribunal of nine, which is constituted as you have it in the Supreme Court of the United States, a division very often occurs five to four. That is a close vote. With the present number, where you have but seven, this amendment would require six judges to set aside an act of the legislature as unconstitutional. It gives perhaps to that small body of men a tremendous power, an undue proposition of power. Pennsylvania has experimented in the past with regard to the numbers in the court of last resort and has even created one or two

courts which have been forgotten. We once had a court called the high court of errors and appeals, which was an appellate court higher than our present superior court, established in the year 1780, and it lasted until the year 1806. That court consisted of eleven judges, the justice of the supreme court with the presidents of the common pleas were there, the president of the executive council was there, and then three other men were called in and commissiond as judges from the outside. The object is, as I uderstand it, to obtain from the court of last resort some sort of definite expression in a critical case in regard to the law which will be accepted by the great body of the people as an acceptable result, as a final utterance of the law. I may be extreme in this, but I would go almost to the point of saying that in a court of last resort, which is intended not simply to give expression to an academic thought, but to discussion of principle, I think when you want the final utterance of the law that the will of the majority ought to rule there, as elsewhere. If you do not increase unreasonably the number of judges in the court of last resort you get this broad view, this varied view, that is reflected wisdom, so to speak, of different industries in different parts of the state, however the districts are created. One of the reasons I have heard suggested although Judge Gordon did not state it, and he may not have heard it stated, was an expression of doubt on the part of the minds of the justices of the supreme court as to whether it would be advantageous to increase their number because the chance of dissent would be thereby greatly increased. If you had nine judges instead of seven you would therefore have two or more additional minds to deal with around the consultation table, and you would have more frequent dissenting, a spectacle presented to the profession and state at large of critical questions decided by a seriously divided court.

Now, that is the only contribution that I can make in the way of letting my brothers of the commission ascertain exactly what I have found out with regard to these various courts, that they are put on the district plan in order that the result of the legal education of different parts of a community should be reflected. We have had an example here in this very amendment in regard to the exigency existing in Lackawanna county about the menace which exists there over the collapse of mines and the falling in from the surface. There is not a judge from Lancaster county, Franklin county or Philadelphia county who can realize exactly what that means. Judge Kelly can realize it or others who come from that district, and it only emphasises what was in my mind when I last discussed it, that there is a great deal in the thought which Judge Gordon practically formulated and stated, that it was not to make the court a representative tribunal in the sense of having to vote on questions, but it was to make the court so broad in its membership, so varied in its scholarship so seasoned in its wisdom, that in the final result, giving utterance to a final expression of the law, there would be good ground and sufficient ground for assurance that final utterance should be accepted by the people as satisfactory instead of a mere determination to be overturned at some future time by a destruction of the opinion of the majority in the overturning of the stability of the law.

Mr. PEPPER. Mr. Chairman: If I were convinced that we ought to have nine judges instead of seven, I hope I should have the courage of Judge Gordon and be willing to pose as a legal Ajax and defy the judical lightning. But I do not feel that way. It seems to me to be a question which might almost be characterized as a question of plain common sense that is now before us. The question is whether we are going to recommend the creation of two new important public positions of rank and dignity with substantial salaries, payable out of the people's money. If those two new officials are needed the amount of money that it will cost to pay them is altogether insignificant and ought not to be considered. If there is a doubt about it or if they are not needed, we ought not to recommend the spending of the public money to pay them. Now, Mr. Chairman, is there any real reason for increasing the number of justices of the supreme court from seven to nine, unless it be that the seven men are not able to adequately to do the work without overstraining themselves? One betrays no confidence when one says that the judges of the supreme court will tell you entirely independently of any discussion of the question now pending that they do not regard themselves as overworked. They are entirely able to discharge the duties which rest upon them. It is said that two members of the court customarily absent themselves from argument so that only five justices sit. There is no assurance, Mr. Chairman, that if such a practice is countenanced by the existing administration of the court it will not be a practice of the court that will prevail when there are nine judges just as well as when there are seven. The percentage of judges who need relief from the strain of listening and not talking back is likely to hold good. There is no real basis, it seems to me, for the contention that a group of nine men will give us collective widsom to a greater degree than is the case with seven men. A group of seven men for the commonwealth of Pennsylvania is surely as representative as a group of nine men at Washington for the whole of the United States. The mere fact that you have nine men instead of seven is not going to make a perceptible difference in the degree of confidence felt by the public in the decisions of the court. Judge Gordon has referred to the unhappy fact that courts of last resort are under fire, that there is public criticism, that there is popular discontent. I remind the Commission, Mr. Chairman, that the most notable instance of criticism of this sort is found in the case of the Supreme Court of the United States, which is composed of nine judges. There is more popular criticism of the Supreme Court of the United States than there is of the supreme court of Pennsylvania, more criticism of nine judges than of seven judges. When you increase the number of your judges you increase the possibility or probability of lack of unanimity, you do increase the possibility of frequent dissent, and I venture to think, sir, that it is the splitting of our courts by dissenting opinions that has more to do with shaking public confidence in decisions of tribunals of last resort than any other thing. I think a picked tribunal of seven men sitting for this commonwealth is an ideal court. There is no earthly necessity for continuing the practice of having two men absent from argument. I venture to believe that the practice is not one which will be permanently adhered to even if the court remains in unchanged numbers; and unless, I say, it can be pointed out that the group of public ser-

vants now doing work satisfactorily is overworked, is suffering from such strain that they ought to be relieved in their own interest or in the interest of greater efficiency, and unless that can be affirmed it seems to me we are putting ourselves in a false position when against the wishes of the men themselves we undertake to increase public expense by the creation of two positions for which no adequate need has been indicated.

Mr. GORDON. Mr. Chairman: I would like to make a reply to the finish argument of the gentlemen from Philadelphia about the increase in the case of the supreme court by the addition of two members. When the supreme court some years ago alleged that it was overworked it asked for and obtained the creation of a superior court to relieve it, and the superior court which we refused to give constitutional recognition to-day was created solely for the purpose of relieving the supreme court of overwork.

Mr. CARSON. Mr. Chairman: I do not think we refused constitutional recognition, I understand we voted that in.

Mr. PEPPER. Mr. Chairman: We did.

Mr. GORDON. Mr. Chairman: You fixed the expense of the state, but the supreme court got relief without creating any additional members of its own court, but by creating an inferior court of last resort, composed of seven judges, and they fixed that court upon the commonwealth, and it was a court to which they gave it a limited jurisdiction so that in civil cases the right to have the opinion of the supreme court would depend upon the financial stake, how large it was, and that man whose suits were not involved in a certain number of thousands of dollars could not get into the supreme court, but he must stay in the court below, the superior court composed of seven judges, created to relieve the supreme court. But that is not all. A little while ago an amendment was passed by, and because it was not called upon was rejected, an amendment to the judiciary article. I want to read the proposed amendment. I read from page 33; "Amend by striking out on line 2 the words, 'a superior court; by inserting in lieu thereof the words 'one or more superior courts,'" submitted by the Honorable Alexander Simpson, Jr., of Philadelphia, a justice of the supreme court. So that if this youngest of the supreme court judges speaks for his brethern or looks with the eye of his brethern down his judicial term, the supreme court is even looking for the creation of another superior court composed, I suppose, of several more judges to relieve their labors. In anticipation of that, therefore, why should not we add two judges who will cost the enormous sum of twenty-five thousand dollars rather than create another inferior superior court composed of seven judges to which certain litigants must go? There is nothing in this argument of convenience, and I am amazed, as Judge Reed so often is, at Mr. Pepper presenting that argument as against this. Everything that Mr. Pepper has said against nine judges can be said against five judges. He thinks that seven is a compact, nice snug court. The trouble with the supreme court is that it is too snug, that it is a comfortable place up there where these gentlemen sit for a long term of twenty-one years and with adequate compensation. Those long terms dispose their incumbents to profundity and solemnity and sometimes somnambulancy, so that they do not hear and see the world that is passing by their doors. Now,

I do not pose as an Ajax defying the lightning of the supreme court, I do not have to, and I do not believe in either threatening disaster to another or inviting it myself. I pass it by. I did want to criticise the impropriety of two judges of the supreme court sending in a protest to this commission against the enlargement of their court by adding two members. Modesty should have required those gentlemen to have said, "We welcome any number you may bring," just as when the attendant physician is spoken to by the apprehensive mother who sees her child fading away by diseases, and says to him, "Don't you think it might be just as well to call in another doctor and see what his opinion is?" Invariably that doctor, if he be a man of large stature in that profession says, "Certainly, madam, call in another, or two others, if you please; I will be very glad to have his opinion." And so these supreme court judges should have remained silent and allowed us to have disposed of this question unembarrassed. Now, I esteem highly the great value Mr. Pepper is to this body by his very learned and able arguments upon all the various questions that occur here. He literally leaves a luminous trail behind him when he discusses the various questions before this body, but I did not hear anything he has said upon this proposition, anything that rises to the dignity of an argument. There are plenty of thoughts which would be acceptable to the supreme court, but none of them which can go through the sieve of syllogism and be pronounced argument. As a financial argument I think I adequately disposed of this, and when he talks about a snug seven-man court, I say that five would be still snugger, and every argument which he has presented for seven would apply to five. On the other hand, I repeat with great solemnity and seriousness that it would be a wholesome greed throughout the judical system of this commonwealth to make this body a body of nine judges, nine minds, and disregard this penny-ante argument of Mr. Pepper about the salaries of judges. Mr. Chairman, we are of the old bar, I am, and he soon will be, and some day Attorney General Carson will be, and we have taken the brunt of the fight before this tribunal; but younger men are coming up, and new problems are coming up. I saw shortly after he died a letter written by Colonel Roosevelt, but a few months before, to a friend of mine, known to almost everyone here, known to my learned friend from Philadelphia, in which he said: "Talking about my being a candidate again, of course, I would not be a candidate again for the presidency. My day is done. I have done my work." He stated what he thought was his real service, and then he said the work of the future must be done by the young men who have lived in it and who come into place with the thought and aptitude and aspirations of the age of which they are a part: and that which was true when thus expressed by Colonel Roosevelt as to the executive office is true some extent at least of judicial office. Let us have fresh minds and numerous to decide such great questions as those pending in that court, so momentous, so solemn, which touch the prosperity of the people so intimately.

Mr. FOX. Mr. Chairman: As a member of the committee I hesitate to differ with my distinguished colleague as to the wisdom of this amendment. The commission will perhaps recall that at the time the amendment was reported I indicated my very great doubt as to the wisdom of it, and my contact with the bar since

we have suggested that the supreme court should be in the future composed of nine members has led me to the belief that it would be a mistake to make the change. I think my friend, Judge Gordon, probably has not been in the supreme court very recently, because I think they are reforming to a certain extent. I argued two cases there last week, and we had six judges on the bench.

Mr. GORDON. That was a compliment to you as a former colleague.

Mr. FOX. No, I think not, because I was not there in Northampton week. I think also that my friend, Judge Gordon, was mistaken in saying that they never talk back, because my experience is that they talk back very frequently; but I do feel that I ought to say a word in behalf of these two judges who have written to us in reference to this matter, and to correct an evident misapprehension on the part of Judge Gordon. He thinks it has been improper for them to address us on this subject, and I want to remind him what he probably has forgotten that we sent to each of the judges of the supreme court a letter in which we invited their criticism and suggestion, and I hold that letter in my hand now. So that it seems to me there was no impropriety in their saying to us that they did not feel that there was any present necessity for the enlargement of the court.

Mr. GORDON. Is that the same letter sent to everybody?

Mr. FOX. This was sent to everybody.

Mr. GORDON. Not especially to the supreme court?

Mr. FOX. Yes.

Mr. GORDON. They got a circular, that is all.

Mr. FOX. Yes, they got a letter in which we invited them to suggest criticism, and I have talked not only to the members of the court, and I solicited the interview, they did not, as to how they felt about this matter, but I talked to the officers of the court, and I learned that during the past winter the lists have never been so light as they are now. I think as a rule the court is through with its work by Tuesday afternoon. It was so last week when I was in court. I believe even in the second period of Philadelphia they get through the first week. So that it is manifest, for the present at least, that the work of the court has been very much lightened, and it seems to me therefore that under these circumstances, when we have not only the sentiment of the bar, (and I cannot agree with Judge Gordon that that sentiment is at all inspired either by the wishes of the court or by the efforts of the court,) but the sentiment of the court itself that at the present time it is not desirable to increase the number of members as it would if this amendment which has been proposed should prevail.

On the question recurring.

Will the Committee agree to the motion?

It was agreed to.

Mr. GORDON. Mr. Chairman: In view of the shortness of work of the supreme court, which Mr. Justice Fox has just alluded to, I move that we strike out "seven" and insert "five" in this clause, so that the court shall be composed of five judges instead of seven.

The CHAIRMAN. Is there a second to the motion?

Mr. GORDON. Mr. Chairman: Judge Reed says we will have to pay them anyhow for the balance of their terms.

The CHAIRMAN. So that the motion is withdrawn.

The secretary read the amendment submitted in writing by Hon. Alexander Simpson, Jr., of Philadelphia, as follows:

Amend by omitting the last sentence (providing substitute for section 17 is adopted).

Mr. CARSON. Mr. Chairman: There are a great many suggestions made here, but they all relate to the same subject, but seems to involve some difference of opinion with regard to phraseology. It seems to me they might as well go to the committee on style as to how to express who shall be the chief justice. I make that motion.

Mr. PEPPER. Mr. Chairman: I second the motion.

The motion was agreed to.

The CHAIRMAN. As the chair understands it, that disposes of all of the suggested amendments down to the amendments to section 3 of article V.

The secretary read the amendment submitted in writing by Hon. Russell C. Stewart, of Easton, Pa., as follows:

Amend by striking out on line 2 the word [shall] and inserting in lieu thereof the word *may*.

This amendment was not called up.

The secretary read the amendment submitted by Hon. Francis Shunk Brown, of Philadelphia, as follows:

Amend by striking out all after the word "eligible" on line 4 and inserting the following: *the justice next in service shall be chief justice.*

This amendment was not called up.

The secretary read the amendment submitted in writing by Hon. R. H. Koch, of Pottsville, Pa., as follows:

Amend by striking out all after the word "in" on line 4 and inserting the words *service shall be chief justice, and when two or more justices have the same time of service and that term is longer than any other justices the one oldest in years shall be chief justice.*

This amendment was not called up.

The secretary read the amendment submitted in writing by James Collins Jones, Esq., and Owen J. Roberts, Esq., of Philadelphia, Pa., as follows:

Amend by inserting on line 5 the words *always* immediately after the word "shall."

This amendment was not called up.

The secretary read the amendment submitted in writing by Hon. Alexander Simpson, Jr., of Philadelphia, as follows:

Amend by striking out the last sentence.

This amendment was not called up.

The secretary read the amendment submitted in writing by the Legislative Reference Bureau, Harrisburg, Pa., as follows:

Amend by striking out from the last sentence the words [and thereafter any justice whose commission shall first expire shall in turn be chief justice].

This amendment was not called up.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE V, SECTION 3.

The committee of the whole proceeded to the consideration of section 3 of article V and suggested amendment.

The secretary read the amendment submitted in writting by Hon. Alexander Simpson, Jr., of Philadelphia, as follows:

Section 3. Jurisdiction of Supreme Court.

1 The jurisdiction of the supreme court shall extend over the state, and the
2 judges thereof shall, by virtue of their offices, be justices of oyer and terminer
3 and general jail delivery in the several counties; they shall have original juris-
4 diction in cases of injunction where a corporation is a party defendant, of
5 habeas corpus, of mandamus to courts of inferior jurisdiction, and of quo
6 warranto as to all officers of the commonwealth whose jurisdiction extends over
7 the state, but shall not exercise any other original jurisdiction; they shall have
8 appellate jurisdiction by appeal, certiorari or writ of error in all cases, as is
9 now or may hereafter be provided by law.

Amend by adding at the end thereof the following:

They shall also have the exclusive right and power to change from time to time the practice and procedure in the several courts of the commonwealth by duly promulgated rules applicable to all courts of the same class or grade, the individual courts retaining, however, the right to adopt and enforce other rules not inconsistent therewith.

Mr. CARSON. Mr. Chairman: I move the adoption of the amendment.

Mr. FISHER. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. CARSON. Mr. Chairman: If the gentleman will look at the suggestion made on page 36 by Messrs. Collins Jones and Owen Roberts, also the suggestion on page 40 made by Mr. Rosenbaum, you will find that all those are pretty nearly related to each other. The substance of it is that we should clothe this court with power to control procedure, and practically it seems to me perfectly proper to give it the authority if they do not already possess it.

Mr. REED. Mr. Chairman: I think we had better take a minute and look at the three different provisions because this provision gives to the supreme court the exclusive right to promulgate rules and probably will prevent the general assembly from interfering. The one on page 36 provides that regulations where promulgated shall have the force of law until modified by the general assembly, and the one on page 40 seems to be the more precise and sensible one. I do not like the one on page 37 because it gives the chief justice, the right to promulgate rules and regulations. I would suggest, if you will permit me, an amendment that we substitute in place of the present motion the adoption of the amendment on page 40, presented by Mr. Rosenbaum, so that we will not waste time.

The CHAIRMAN. Better read over that carefully. I understand Judge Reed's motion is withdrawn and the matter before the committee is Mr. Carson's motion to adopt the suggested amendment of Mr. Justice Simpson.

Mr. REED. Mr. Chairman: No, sir: I refreshed myself and move to amend by substituting the one suggested by Messrs. Jones and Roberts on page 36.

Mr. PEPPER. Mr. Chairman: I second the motion.

Mr. CARSON. Mr. Chairman: I accept the amendment.

The CHAIRMAN. Then the chair rules that the amendment suggested by Mr. Justice Simpson on page 34 drops, because there is no one to stand sponser for it, and we will come to the other one in its regular order, and not mix the calendar, if that is agreeable to Judge Reed and Mr. Pepper.

Mr. REED. Mr. Chairman: Entirely so.

ARTICLE V, SECTION 3 A.

The committee of the whole proceeded to the consideration of section 3-A of article V and suggested amendments.

The secretary read the section and amendment submitted in writing by the Civic Club of Allegheny County, Pittsburgh, Pa., as follows.

Section 3-A. Superior Court.

1 The superior court shall consist of seven judges learned in the law, who shall
2 be elected by the qualified electors of the state at large. They shall hold their
3 office for the term of sixteen years, if they so long behave themselves well, and
4 shall not be eligible for re-election. The judge oldest in commission shall be
5 president judge.

Strike out on line 4 the word [not].

Mr. FOX. Mr. Chairman: I call the attention of the commission to the fact that that was improperly reported in the tentative draft. The section as we adopted it is found on page 321 of the proceedings of the commission, and it was that "The superior court shall consist of seven judges learned in the law, who shall be elected by the qualified voters of the state at large. They shall hold their office for the term of fourteen years, if they so long behave themselves well, and shall be eligible for re-election. The judge oldest in commission shall be president judge and any president judge re-elected in said court shall continue to be the president judge thereof."

Mr. REED. Mr. Chairman: We increased that to sixteen somewhere.

Mr. FOX. Mr. Chairman: No, we did not; that would make it twenty-eight.

The CHAIRMAN. In order to get the matter before the commission with the error eliminated, if that be an error, as it seems to be, the chair moves as a substitute, if the chair may make a motion for anything that is pending, that the word "sixteen" be stricken out and the word "twenty-one" be substituted, so as to make the term of the superior court judges the same as those of the supreme court.

Mr. REED. Mr. Chairman: And make them ineligible.

Mr. CARSON. Mr. Chairman: I think that is a very good thought.

Mr. CARSON. Mr. Chairman: I make that motion.

Mr. FISHER. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. REED. Mr. Chairman: I heard some criticism of the provision promulgated in this tentative draft on the ground that most of the superior court judges are younger than the supreme court judges when elected, and that a man is thirty-six and perhaps forty and is elected for sixteen years and he is not eligible for election, you turn him out at a period when it is pretty hard for him to get a start and he is not young enough to work.

Mr. FISHER. Mr. Chairman: I confess I am a little confused as to where we are; Judge Fox is entirely right when he says that the record here is mistaken as to what the action of the commission was. I am very clear in my memory that we provided for a fourteen-year term for the superior court justices with one re-election. Now, what have we before us? Is it understod that we are considering the error which is now before us on the calendar, or are we considering the previous action of the commission?

The CHAIRMAN. I think the chair was acting a little with the idea of getting an expression of opinion as to whether or not the term should be twenty-one years, and the judge be ineligible for re-election. I was just trying to save the time of the commission. If it stands with the term of fourteen years, as Judge Fox says, with one opportunity to be re-elected, I have no objection.

Mr. FISHER. Mr. Chairman: Then, Mr. Chairman, we should consider section 3-A as it is printed in the calendar and the question before us is, as I understand, to amend it by striking out the word "sixteen" in line three and substituting the word, "twenty-one."

Mr. CARSON. Mr. Chairman: That is right.

The CHAIRMAN. Yes, that is the vote. Is there objection to that?

Mr. FISHER. Mr. Chairman: That is our motion, then.

The CHAIRMAN. Then the question is on the motion to strike out the word "sixteen" and adopt section as it is in the calendar, substituting the word "twenty-eight" for the word "sixteen."

Mr. REED. Mr. Chairman: What does that do to the present judges? I suppose the schedule would have to provide for that.

The CHAIRMAN. They would serve their present terms out, their terms of ten years, and if they were re-elected they would be re-elected for a term of twenty-one years. That can be provided for in the schedule.

On the question recurring,

Will the Committee agree to the motion?

It was agreed to.

The CHAIRMAN. As the chair understand, that disposes of all the suggested amendments down to the last one on page 35.

The secretary read the amendment submitted in writing by Hon. Russell C. Stewart, of Easton, Pa., as follows:

Strike out on lines 3 and 4 the words [shall not be eligible for re-election] or strike out on line 3 the word [sixteen] and insert in lieu thereof the word *twenty-one*.

This amendment was not called up.

The secretary read the amendment submitted by the chair, and in writing by the Legislative Reference Bureau, Harrisburg, Pa., at public hearings April 6, 1920, as follows:

Strike out on line 3 the word [sixteen] and insert in lieu thereof the word *twenty-one*.

This amendment was not called up.

The secretary read the amendment submitted in writing by Hon. Francis Shunk Brown, of Philadelphia, as follows:

Amend by striking out all after the word "large" on line 2 and inserting the following: *They shall hold office for twenty-one years and shall not be again eligible. The judge next in service shall be president judge.*

This amendment was not called up.

The secretary read the amendment submitted in writing by Hon. R. H. Koch, of Pottsville, Pa., as follows:

Amend by striking out all the section after the word "in" on line 4 and inserting the words *service shall be president judge, and when two or more judges have the same time of service and that term is longer than that of any other judge, the one oldest in years shall be president judge.*

The CHAIRMAN. The suggestion is made by the secretary that it refers to the man who shall be the chief justice, and as that matter was referred to the committee on style this might take the same course, if that is agreeable to the commission.

Mr. REED. Mr. Chairman: I move that this matter be referred to the committee on style.

Mr. CARSON. Mr. Chairman: I second the motion.

The motion was agreed to.

The secretary read the amendment submitted in writing by Hon. Alexander Simpson, Jr., of Philadelphia, as follows:

Amend by inserting on line 2 after the words "shall" the word *each*, and on line 1 after the words "consist of" the words *not less than*.

The CHAIRMAN. It is the chair's understanding that the amendment on page 36, suggested by Judge Simpson, Mr. Schick and Mr. Jones, in view of the action just taken, fixing the term at twenty-one years, falls, and the chair so rules.

The secretary read the amendment suggested at public hearings by Robert P. Schick, Esq., on behalf of the Constitutional Club, Philadelphia, and submitted in writing by James Collins Jones, Esq., and Owen J. Roberts, Esq., of Philadelphia, as follows:

Strike out.

This amendment was not called up.

ARTICLE V, SECTION 3-B.

The committee of the whole proceeded to the consideration of section 3-B of article V and suggested amendment.

The secretary read the section and amendment submitted by James Collins Jones, Esq., and Owen J. Roberts, Esq., of Philadelphia, as follows:

Section 3-B. Jurisdiction of Superior Court.

1 Until otherwise directed by law the jurisdiction and powers of the superior
2 court shall be and continue as at present established.

Strike out.

Mr. REED. Mr. Chairman: That ought to stay in if we keep the superior court in.

The CHAIRMAN. Yes. The chair hears no motion to adopt this amendment, and it will therefore be dropped.

ARTICLE V, SECTION 3-C. (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 3-C of article V.

The secretary read the proposed new section submitted in writing by James Collins, Esq., and Owen Roberts, Esq., of Philadelphia, and W. J. Fitzgerald, Esq., Scranton, Pa., as follows:

Section 3-C. (New). Regulative Power and Duty of Supreme Court.

It shall be the duty of the supreme court to regulate legal procedure in courts of record and to adopt the processes of justice to the necessities of all classes of litigants.

In the discharge of the duty imposed by this section, the supreme court shall have power to regulate forms of action, pleading and practice, proof, the way in which judicial records shall be kept, and the conditions under which fees and costs may be remitted and counsel assigned without expense to litigants; and to regulate and control the activities of any agency, public or private, rendering legal aid.

Regulations when promulgated by the chief justice shall have the force of law until modified by the general assembly and shall operate to repeal all laws heretofore enacted inconsistent with such regulations.

Courts of record shall have the power to make their own rules not inconsistent with such regulations or with general laws.

Mr. REED. Mr. Chairman: I move that the amendment be adopted. That is the one we were talking about.

Mr. CARSON. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE V, SECTION 3-D. (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 3-D of article V.

The secretary read the proposed new section submitted by Hon. Francis Shunk Brown, of Philadelphia, as follows:

Section 3-D (New).

No law shall be held unconstitutional by the supreme court unless at least six justices shall be of that opinion.

This amendment was not called up.

ARTICLE V, SECTION 3-E (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 3-E of article V.

The secretary read the proposed new, section submitted in writing by Hon. Francis Shunk Brown of Philadelphia, as follows:

Section 3-E (New).

The supreme court shall give advisory opinions upon important questions of law and upon solemn occasions when required by the governor, the senate or the house of representatives.

Mr. CARSON. Mr. Chairman: I only wish the gentlemen who have those thoughts in mind would recall the fact that George Washington once attempted to coax opinions out of the Supreme Court of the United States, and they all absolutely refused, and said they would not commit themselves and that the executive ought not to interrogate them. The same thing made Lord Coke famous when James I attempted to interrogate him. Possibly one of his lingering vicious vassal subjects came down from New England to poison our judicial system down here.

This amendment was not called up.

ARTICLE V, SECTION 3-F (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 3-F of article V, with the suggested amendment.

The secretary read the proposed new section submitted in writing by Hon. Robert von Moschzisker, justice of the supreme court, Philadelphia, as follows:

Section 3-F (New).

The supreme court shall have power when necessity arises to send a judge of any court of common pleas to any district to hold a court that such common pleas judge could hold in his own district.

Mr. REED. Mr. Chairman: Is not that done now?

Mr. CARSON. Mr. Chairman: Can they do that now, sir?

Mr. REED. Mr. Chairman: Yes.

Mr. PEPPER. Mr. Chairman: They would be able to do it were it not for section 3-C which we adopted were to become the law. I should suppose the power of the supreme court as well as the duty of the tribunal would be to regulate legal proceeding in the courts of record.

Mr. REED. Mr. Chairman: I understand now that a judge who thinks he has some time and he would like to work, files his name with the prothonotary of the supreme court and it simply sends him around.

The CHAIRMAN. The chair hears no motion to adopt this suggested amendment, and it will be dropped.

ARTICLE V, SECTION 4.

The committee of the whole proceeded to the consideration of section 4 of article V, and suggested amendments.

The secretary read the section and amendments submitted in writing by the Civic Club of Allegheny County, Pittsburgh, Pa., and H. K. Siebeneck, Esq., of Pittsburgh, Pa., as follows:

Section 4. Common Pleas Courts.—Powers of Judges.—Certiorari.—Election of Judges.—Chancery Powers.

1 The court of common pleas in each judicial district shall consist of such judge
2 or judges, learned in the law, as the legislature may determine are required in
3 the particular district. These judges shall be elected by the qualified electors of
4 the district. They shall hold office for a term of ten years, if they so long behave
5 themselves well; but for any reasonable cause, which shall not be sufficient ground
6 for impeachment the governor may remove any of them on the address of two-
7 thirds of each house of the general assembly. The judge oldest in commission
8 shall be the president judge, but any president judge re-elected in the same court
9 or district shall continue to be the president judge thereof. Not more than four
10 counties shall at any time be included in one judicial district organized for said
11 courts.
12 The courts of common pleas shall have original and general jurisdiction in all
13 civil causes and shall exercise the powers and have, subject to such changes as
14 may be made by law, such jurisdiction as is now vested in the courts of common
15 pleas of this commonwealth, and as is now provided by the acts of assembly here-
16 tofore passed, and such other powers as may be from time to time by law con-
17 ferred upon them.
18 The several courts of common pleas, besides the powers herein conferred, shall
19 have and exercise, within their respective districts, subject to such changes as may
20 be made by law, such chancery powers as are now vested by law in the several
21 courts of common pleas of this commonwealth, or as may hereafter be conferred
22 upon them by law. They shall have appellate jurisdiction in appeals from the
23 justices of the peace and district peace judges; they shall, within their respective
24 districts, have power to issue writs of certiorari to justices of the peace and to
25 other inferior courts not of record and to cause their proceedings to be brought
26 before them and right and justice to be done.

27 The judges of the courts of common pleas shall be judges of the courts of oyer
28 and terminer, quarter sessions of the peace and general jail delivery and of the
29 orphans' court except in such judicial districts as now have separate orphans'
30 courts or where by law separate orphans' courts may be created, and within their
31 respective districts shall be justices of the peace as to criminal matters.

Amend by striking out on lines 5, 6, 7, the words [but for any reasonable cause, which shall not be sufficient ground for impeachment, the governor may remove any of them on the address of two-thirds of each house of the general assembly].

Amend further by striking out on line 22 the words [shall have] and inserting in lieu thereof the words *may exercise*, and by adding on line 26 after the word "judges" the words *and from any inferior courts in such cases and in such manner as may be fixed by law.*

This amendment was not called up.

The CHAIRMAN. The chair hears no motion to adopt the first and second amendments, and they will be dropped. The next suggested amendments is to strike out in line 36 certain words. Does any member of the commission move the adoption of the suggested amendment?

Mr. REED. Mr. Chairman: I would make that motion for the purpose of bringing up the question. We have to-day, you know the county court in Allegheny county, which is doing good work, and to which, under the law, all appeals from justices of the peace now come. That relieves the common pleas from an immense amount of that sort of work, and unless we change this provision we wipe that court out of a large part of its jurisdiction, so I would move the amendment suggested by the civic club, you will find it at the head of page 39. Judge Kennedy's suggestion is practically the same.

Mr. ENGLISH. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. REED. Mr. Chairman: I do not think that is right. I would like to withdraw that motion. You will find that at the foot of page 37 the court of common pleas shall have appellate jurisdiction. That is line 26. They shall have appellate jurisdiction in appeals from justices of the peace and the district peace judges. This amendment would still give them that jurisdiction. I will withdraw that motion and make it again when we get to the head of page 39.

Mr. ENGLISH. Mr. Chairman: I was just about calling attention to that situation, whether it was not possible to eliminate the words "district peace judges" from this section and then adopt it.

The CHAIRMAN. Do you make that as a motion?

Mr. ENGLISH. Mr. Chairman: I move that the words "district peace judges" where they occur in lines 27 and 28 on page 37, the section as it appears in the tentative draft be eliminated.

Mr. REED. Mr. Chairman: I second the motion.

The motion was agreed to.

The CHAIRMAN. As I understand, Judge Reed withdraws his motion to adopt the suggested amendment on page 38, and the suggested amendment falls.

The secretary read the amendment submitted in writing by Hon. R. H. Koch, of Pottsville, Pa., as follows:

Amend the first paragraph by striking out on lines 7, 8 and 9 the words [commission shall be the president judge, but any president judge re-elected in the same court or district shall continue to be the president judge thereof] and inserting in lieu thereof the words *service shall be president judge, and when two or more judges have the same time of service and that time is longer than that of any other judge, the one oldest in years shall be president judge.*

The CHAIRMAN. This is the question we have already sent to the committee on style, and as the chair understands it, it should follow the same course and be referred to the committee on style.

The secretary read the amendment submitted in writing by James Collins Jones, Esq., and Owen J. Roberts, Esq., of Philadelphia, as follows:

Amend by striking out on lines 2 and 3 the words [legislature may determine are required in that particular district] and inserting in lieu thereof the words *general assembly may prescribe.*

Amend by striking out all of the section after the word "thereof" on line 9 and by inserting the sentence *The office of associate judge not learned in the law is abolished, but the several associate judges in office when this constitution shall be adopted shall serve for their unexpired terms.*

Mr. REED Mr. Chairman: That ought to go to the committee on style.

Mr. FISHER. Mr. Chairman: That is style.

The CHAIRMAN. There being no motion to adopt the first amendment, it will be dropped.

The second suggested amendment is one relative to associate judges.

Mr. CARSON. Mr. Chairman: Before we get too far away from the consideration of what we have already done, it seems to me there are some words omitted from line 6 of page 37 which ought to be restored if they were there originally, "and shall be eligible for re-election." Why a limit, sir, by proving that he can be re-elected instead of leaving those common pleas judges without that protection? I would move to insert after the word "well" in line 6, of section 4 of article V the words "and shall be eligible for re-election.

The CHAIRMAN. It follows that they are eligible for re-election as long as there is no prohibition on it in the constitution. The reasons why we have changed it was because we have increased the terms of superior court judges. Are they not eligible for re-election unless the constitution so provides?

Mr. CARSON. Very well.

The CHAIRMAN. The chair hears no second to the motion and this amendment will be dropped.

The second amendment suggested by Mr. Jones and Mr. Roberts, is the next to the last one on page 38, the effect of which is to abolish the office of associate judge. Is that amendment moved by any member of the commission?

Mr. FISHER. Mr. Chairman: I was laboring under the impression that we had provided for the abolition of this office, when we were in session before, but if we did not do so, it seems to me that we should, and I would therefore move the adoption of this amendment.

The CHAIRMAN. It will be seconded by the chair.

Mr. CARSON. Mr. Chairman: You mean by that the abolition of associate judges. I find the same thing on page 40, section 5, "the office of associate judge not learned in the law is abolished." We have it already there.

The CHAIRMAN. Yes; so that there is no necessity for this amendment, and the amendment will be dropped.

The secretary read the amendment submitted in writing by Hon. R. A. Kennedy, president judge of the Allegheny county court, as follows:

Amend paragraph 2 by inserting on line 14 after the word "jurisdiction" the words *except where such jurisdiction shall be vested in other courts.*

Amend paragraph 3 by inserting on line 24 after the word "have" the words *except where otherwise provided by law.*

The CHAIRMAN. The first suggestion will be dropped.

The next suggestion is at the head of page thirty-nine, by Judge Kennedy.

Mr. REED. Mr. Chairman: I move that the suggested amendment be adopted.

Mr. FOX. Mr. Chairman: I think probably I do not know what his purpose was, but I imagine that it must be so as not to take away from the courts of Allegheny county the jurisdiction that they have, so that perhaps both of those ought to be adopted. Do you know about that, Judge Reed?

Mr. REED. I suppose it was. I have not got his letter, he wrote a letter down here.

Mr. PEPPER. Mr. Chairman: I move that both suggested amendments be dropped.

Mr. REED. Mr. Chairman: I second the motion.

The motion was agreed to.

The secretary read the amendment submitted in writing by Hon. Alexander Simpson, Jr., of Philadelphia, as follows:

Amend by striking out on lines 7, 8 and 9 the sentence [The judge oldest in commission shall be the president judge, but any president judge re-elected in the same court or district shall continue to be the president judge thereof].

The CHAIRMAN. This amendment is also directed to the question of judges oldest in the commission being the president judge, and I take it for granted that will follow the course of the other suggested amendments along that line and go to the committee on style.

The secretary read the amendment submitted in writing by Hon. Francis Shunk Brown, of Philadelphia, as follows:

Amend to read as follows:

The court of common pleas in each judicial district shall consist of such judge or judges, learned in the law, as may by law be determined necessary, and shall be re-elected by the qualified electors of the district. They shall hold office for ten years, but for any reasonable cause, which shall not be sufficient for impeachment, they may be removed on the address of two-thirds of each house of the general assembly. The judge oldest in commission shall be the president judge, and if he be re-elected in the same court or district, shall continue to be the president judge thereof. Not more than four counties shall compose one judicial district for said courts.

Courts of common pleas shall have original and general jurisdiction and powers in all civil causes now vested therein subject to changes by law and such other powers as may be conferred upon them by law. They shall have within their respective districts, subject to change by law, such chancery powers as they now have and as may hereafter be conferred by law. They shall have appellate jurisdiction in appeals from justices of the peace; they shall have power within their respective districts to issue writs of certiorari to justices of the peace and to other inferior courts, not of record, to cause their proceedings to be brought before them and justice be done.

They shall be judges of the courts of oyer and terminer, quarter sessions of the peace and general jail delivery, and of the orphans' court, except in *districts which now or hereafter may have separate orphans' courts*, and within their respective districts shall be justices of the peace in criminal causes.

This amendment was not called up.

The secretary read the amendment submitted in writing by J. P. McNarney, Esq., of Emporium, Pa., as follows:

And by striking out the last sentence of paragraph 1.

This amendment was not called up.

On the question,
Will the committee agree to the section as amended?
It was agreed to.

ARTICLE V, SECTION 4-A. (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 4-A of article V.

The secretary read the proposed new section submitted by Samuel Rosenbaum, Esq., representing the Constitutional Club, Philadelphia, at public hearings April 14, 1920, as follows:

Section 4-A (New).

The general assembly shall provide by law for the appointment of a board of procedure, composed partly of judges and partly of other persons learned in the law, which shall have exclusive power to make, alter and repeal the rules governing practice and procedure in all proceedings in the courts of the commonwealth. All laws and rules in force in the commonwealth on said subjects are henceforth to be deemed rules subject to said power, but this shall not be construed to include laws regarding organization of courts.

The CHAIRMAN. It is the chair's understanding that this has already been covered by the amendment which was introduced by Mr. Jones and Mr. Roberts, and therefore this amendment will be dropped.

ARTICLE V, SECTION 5.

The committee of the whole proceeded to the consideration of section 5 of article V and suggested amendments.

The secretary read the section suggested at public hearings by Robert P. Shick, Esq., of Philadelphia, as follows:

Section 5. Judicial Districts.—Associate Judges.

1 Whenever a county shall contain fifty thousand inhabitants it may constitute a
2 separate judicial district, and when so constituted shall elect one judge learned in
3 the law, and the general assembly shall provide for additional judges learned in
4 the law, as the business of the said district may require. Counties containing a
5 population less than is sufficient to constitute separate districts shall be formed
6 into convenient single districts, or, if necessary, may be attached to contiguous
7 districts, as the general assembly may provide. The office of associate judge, not
8 learned in the law, is abolished, but the several associate judges in office when this
9 constitution shall be adopted shall serve for their unexpired terms.

Strike out.

Mr. CARSON. Mr. Chairman: We have rejected his general plan, so that ought to fall.

The CHAIRMAN. There being no motion to adopt this amendment, it will be dropped.

The secretary read the amendment submitted in writing by James Collins Jones, Esq., and Owen J. Roberts, Esq., of Philadelphia, as follows:

Amend by striking out the word [may] on line 1 and inserting the word *shall*.
Amend further by striking out all of the section after the word "provide" on line 7.

Mr. PEPPER. Mr. Chairman: I have not grasped the significance of the proposition. Those gentlemen seldom make suggestions that are not supported by substantial thought.

The CHAIRMAN. The effect of this would make it mandatory that when a county contains fifty thousand inhabitants it shall constitute a separate judicial district.

Mr. PEPPER. Mr. Chairman: I see the distinction. I wanted to see what was meant by their proposition. I did not want it to go by default. I was wondering what could be said in favor of this proposal.

Mr. ENGLISH. It strikes me there is possibly merit in that suggestion. When a county has fifty thousand inhabitants it ought to have a separate judicial organization and ought to become a separate judicial district. There ought to be, I am not sure, about fifty thousand, it seems to me. Ffty thousand people in a single judicial district ought to furnish litigation to keep one court busy.

The CHAIRMAN. When a county reaches that population?

Mr. ENGLISH. Mr. Chairman: Yes, sir.

The CHAIRMAN. I have no objection to it.

Mr. ENGLISH. Therefore there is merit in the suggestion that the word "may" should be changed to the "shall."

Mr. REED. Mr. Chairman: If a county of fifty thousand inhabitants, or a county containing twenty-five and another thirty thousand, they together are one district, or one county of forty and the other thirty, then that county goes along and becomes fifty thousand and immediately separates from the smaller county.

Mr. CARSON. That connects up with something else.

Mr. FISHER. Mr. Chairman: May I presume to attempt to enlighten the commission, if darkness will enlighten them? I think the effect of this proposition is to remove the creation of the county into a judicial district from the field of legislative action. As the constitution reads at present I think it has been held by the courts that before a county can become a separate judicial district it requires an act of the legislature. If you put the word "shall" in, will it not become so automatically under the terms of the constitution? It seems to me that is the change that would be effected here if this amendment carries. I doubt the wisdom of making this mandatory provision here because, as Judge Reed says, there would have to be districts containing more than one county; they may contain up as high as four counties, if I recall the draft submitted. Suppose it consists of two counties, one containing a small population like Cameron county, which is attached to another county, Elk county for instance. Elk county has an industrial boom and gets fifty thousand. and it automatically becomes a separate judicial district, and little Cameron with just a few thousand inhabitants is then left as a separate judicial district. It seems to me it is wise to leave the term as it is in the draft so that the question may be determined by legislative action. The legislature will, of course, hear from the people who are interested in the creation of a district and will act on the facts as they exist at the time.

Mr. PEPPER. Mr. Chairman: Senator Fisher has answered my question.

The CHAIRMAN. There being no mover, the suggested amendment will be dropped.

The secretary read the amendment submitted in writing by J. P. McNarney, Esq., of Emporium, Pa., as follows:

Strike out and substitute therefore the following section:

Each county shall constitute a separate judicial district and shall elect one judge learned in the law. The general assembly shall provide for additional judges learned in the law as the business of the district shall require.

The office of associate judge, not learned in the law, is abolished, but the several associate judges in office when this constitution is adopted shall serve for their unexpired terms.

This amendment was not called up.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE V, SECTION 6.

The committee of the whole proceeded to the consideration of section 6 of article V and suggested amendments.

The secretary read the section and amendment submitted in writing by James Colling Jones, Esq.; Owen J. Roberts, Esq., and Robert P. Shick, Esq., of Philadelphia, as follows:

Section 6. Courts of Common Pleas of Philadelphia and Allegheny Counties.

1 In the county of Philadelphia the jurisdiction and powers now vested in the
2 several numbered courts of common pleas shall be vested in one court of common
3 pleas, composed of all the judges in commission in said court. Such jurisdiction
4 and powers shall extend to all proceedings at law and in equity which shall have
5 been instituted in the several numbered courts, and shall be subject to such
6 changes as may be made by law, and subject to change of venue as provided by
7 law. The judges oldest in commission shall be the president judge but any presi-
8 dent judge re-elected shall continue to be the president judge.
9 The number of judges in said court may be by law increased or decreased from
10 time to time.
11 In the county of Allegheny there shall also be but one court of common pleas
12 composed of all the judges in commission in said courts with jurisdiction, organ-
13 ization and power as now established, subject to such changes as may be provided
14 by law, and subject to change of venue as provided by law. The judge oldest
15 in commission shall be the president judge but any president judge re-elected
16 shall continue to be the president judge.
17 The number of judges in said court may be by law increased from time to time.
18 The said courts in the county of Philadelphia and Allegheny, respectively, shall
19 from time to time, in turn, detail one or more of their judges to hold the courts
20 of oyer and terminer and the courts of quarter sessions of the peace of said coun-
21 ties, in such manner as may be directed by law.

Strike out.

The CHAIRMAN. The attention of the members is particularly invited to these amendments that now follow:

Mr. CARSON. Mr. Chairman: May I call attention to the fact that there seems to be an obvious omission in line 20, page 412. The line terminates with the word "increased" and the word "decreased" is omitted. If you will look at lines 11 and 12 you will find so far as Philadelphia county is concerned the number of judges may be increased or decreased. There is no reason why a distinction should be drawn between Philadelphia and Allegheny counties in that respect. It seems to me the word "decreased" was inadvertently omitted.

Mr. REED. It went out with that in the tentative draft.

Mr. CARSON. And it was omitted.

Mr. REED. Yes.

Mr. CHAIRMAN. In the tentative draft the words increased or decreased were there. It may have been dropped by the printer.

The chair hears no motion to adopt the amendment, and it will therefore be dropped.

The suggested amendment by Mr. Jones, Mr. Roberts and Mr. Shick to section VI of article 5 is in reference to the courts of common pleas of Philadelphia and Allegheny county, the suggested amendment being to strike out. The secretary suggests that the words "or decreased" should be inserted here by amendment.

Mr. REED. Mr. Chairman: I move that the words "or decreased" be inserted in line 20 after the word "increased."

Mr. CARSON. Mr. Chairman: I second the motion.

The motion was agreed to.

The CHAIRMAN. The chair hears no motion to adopt the suggested amendment by Mr. Jones, Mr. Roberts and Mr. Shick to strike out section 6, and it will therefore be dropped.

The secretary read the amendment submitted in writing by Hon. Alexander Simpson, Jr., of Philadelphia, as follows:

Substitute for this section the following: :

On and after the first Monday of January following the adoption of this constitution, there shall be but one court of common pleas in each judicial district of the commonwealth, which shall consist of all the judges of the present courts of common pleas then therein and of their successors in office, but the number of judges in any of said courts from time to time may be increased or decreased as provided by law. Each of the said courts shall have all the jurisdiction and powers now or hereafter vested in the courts of common pleas, subject to such changes as may be made by law, and shall have the control and disposition of all proceedings now pending or hereafter begun in the courts of common pleas of said district, subject to changes of venue as provided by law. In courts containing more than one judge, the board of judges shall from time to time in turn detail the judges to hold the criminal courts in said judicial district.

Mr. CARSON. Would it be stretching the powers of the committee on style to refer that to them? It seems to me to be a recast of the thought that is expressed. There is no substantial change, simply phrasing.

Mr. PEPPER. Mr. Chairman: There is one matter which I assume we intended to cover in our draft of section 6 but which we did not in fact cover. You will observe in line 4 and in subsequent lines it is declared that the jurisdiction of this one court which is to be created shall extend to all proceedings at law and in equity which shall have been instituted in the several courts. Then we fail to provide that the courts shall have another jurisdiction, that is a jurisdiction which would carry pending suits to conclusion. Would it be so covered?

The CHAIRMAN. Yes; I think it would, or so I fancy.

Mr. PEPPER. I think it would, so that I think you are right, Mr. Chairman; that is only a question of phraseology.

The CHAIRMAN. Then as the chair hears no motion to adopt the suggested amendment on the bottom of page 41, it will be dropped.

The secretary read the amendment submitted in writing by Hon. Francis Shunk Brown, and John Tiehl, Esq., of Philadelphia, as follows:

Amend by inserting on line 17 after the word "increased" the words *or diminished.*

The CHAIRMAN. This has been provided for, and the suggested amendment will be dropped.

The secretary read the amendment submitted in writing by Hon. Francis Shunk Brown, of Philadelphia, as follows:

Amend by striking out the first paragraph and inserting in lieu thereof the wording of the present constitution in regard to the courts of common pleas in Philadelphia county, which reads as follows:

In the county of Philadelphia all the jurisdiction and powers now vested in the district courts and courts of common pleas, subject to such changes as may be made by this constitution or by law, shall be in Philadelphia vested in five distinct and separate courts of equal and co-ordinate jurisdiction, composed of three judges each. The said courts in Philadelphia shall be designated respectively as the court of common pleas number one, number two, number three, number four, and number five, but the number of said courts may be by law increased from time to time, and shall be in like manner designated by successive numbers. The number of judges in any of said courts, or in any county where the establishment of an additional court may be authorized by law, may be increased from time to time, and whenever such increase shall amount in the whole to three, such three judges shall compose a distinct and seperate court as aforesaid, which shall be numbered as aforesaid. In Philadelphia all suits shall be instituted in the said courts of common pleas without designating the number of the said court, and the several courts shall distribute and apportion the business among them in such manner as shall be provided by rules of court and each court to which any suit shall be thus assigned shall have exclusive jurisdiction thereof, subject to change of venue, as shall be provided by law.

Mr. CARSON. Mr. Chairman: That would simply undo what you have already done.

The CHAIRMAN. The chair hears no motion to adopt this suggested amendment, and it will therefore be dropped.

The secretary read the amendment submitted in writing by Hon. Russell C. Stewart, of Easton, Pa., as follows:

Strike out of the fifth paragraph the word [their].

Mr. CARSON. Mr. Chairman: I think if there is anything in the suggestion it ought to include the words also, "one or more of their judges" detail one or more judges.

The CHAIRMAN: The amendment will be dropped and go to the committee on style.

The secretary read the amendment submitted in writing by the Civic Club of Allegheny County, Pittsburgh, Pa., and H. K. Siebeneck, Esq., of Pittsburgh, Pa., as follows:

Add at the end thereof the following:

Nothing in this section shall authorize the general assembly to legislate specially for either Philadelphia or Allegheny counties, except as specifically authorized herein.

This amendment was not called up.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE V, SECTION 7.

The committee of the whole proceeded to the consideration of section 7 of article V and suggested amendments.

The secretary read the section and amendment suggested at public hearings by Robert P. Shick, Esq., of Philadelphia, and in writing by James Collins Jones, Esq., and Owen J. Roberts, Esq., of Philadelphia, as follows:

Section 7. Prothonotary of Philadelphia.—Salaries.—Fees.—Dockets.

1 For Philadelphia county there shall be one prothonotary's office, the prothono-
2 tary to be appointed by the judges of said court and to hold his office for three
3 years, subject to removal by a majority of said judges; the said prothonotary shall

4 appoint such assistants as may be necessary and authorized by said court; and
5 he and his assistants shall receive fixed salaries to be determined by law and
6 paid by said county; all fees collected in said office except such as may be due
7 to the commonwealth shall be paid by the prothonotary into the county treasury.

Strike out.

Mr. REED. Mr. Chairman: Why should that not be stricken out if they only have one court? The purpose of that was that they should have one prothonotary. I do not suppose that it does any damage where it is except that there is no longer any use for it.

Mr. ENGLISH. Mr. Chairman: Might not this section interfere with the section which has been agreed to, I believe, with regard to controlling the compensation to be paid county officers in Philadelphia? I notice that that section has a provision that the salaries of the prothonotary and assistants are to be determined by law and paid by the county. Possibly there might be some conflict between this and the other section which was agreed to which would give to the city council of Philadelphia control over the compensation of the county officers.

The CHAIRMAN. I think the law is that they are to be paid out of the fees of the office.

Mr. CARSON. Mr. Chairman: That is true.

Mr. REED. Mr. Chairman: It may be so; this provision says the fees collected are to go to the county treasury.

The CHAIRMAN. If the other amendment is adopted it seems to me we can work that in. The chair hears no motion to adopt the amendment to strike out this section, and the proposed amendment therefore falls.

The secretary read the amendment submitted in writing by Hon. Francis Shunk Brown, of Philadelphia, as follows:

Amend by striking out on line 1 the words [For Philadelphia] and inserting in lieu thereof the words *in each*, and by striking out on lines 6 and 7 the words [except such as may be due to the commonwealth].

This amendment was not called up.

ARTICLE V, SECTION 11.

The committee on the whole proceeded to the consideration of section 11 of article V and suggested amendments.

The secretary read the section and amendment submitted in writing by the Legislature Reference Bureau, Harrisburg, Pa., as follows:

Section 11. Justices of the Peace.—Aldermen.—Term.—Residence.—Number.

1 *For the better administration of justice, the general assembly shall provide for*
2 *the division of the several counties of the commonwealth, except the county of*
3 *Philadelphia, into convenient districts to be known as justices of the peace dis-*
4 *tricts. Cities containing a population of fifty thousand inhabitants or less, as de-*
5 *termined by the last United States decennial census, shall separately, or when*
6 *joined with one or more boroughs or townships, or both, constitute separate dis-*
7 *tricts. All other cities shall have one district for each fifty thousand in-*
8 *habitants ascertained as aforesaid, to any of which districts may be added one or*
9 *more boroughs or townships, or both. Boroughs, towns or townships may con-*
10 *stitute separate districts, or may be joined with other boroughs, towns or town-*
11 *ships. After each United States decennial census new districts may be created or*
12 *the boundaries of existing districts altered; but in no case under this section shall*
13 *boroughs or townships be divided.*
14 *One justice of the peace shall be chosen for each district, shall be elected by the*
15 *qualified electors of the respective districts at a municipal election, and shall hold*
16 *office for a term of six years from the first Monday of January next ensuing, if he*
17 *shall so long behave himself well.*

18 *Justices of the peace shall have been inhabitants of their respective districts two*
19 *years next before their election (unless absent on the public business of the United*
20 *States or of this state), and shall reside in their respective districts during their*
21 *terms of office. In districts containing a city, justices of the peace shall have*
22 *been residents of the city for said period and shall be learned in the law. The*
23 *said justices shall be removed from office for reasonable cause found by the proper*
24 *court of common pleas after hearing and upon petition setting forth the said*
25 *cause, signed by at least five hundred inhabitants of the proper district or in*
26 *the manner prescribed by article VI of this constitution.*
27 *Vacancies in the said office of justice of the peace shall be filled by the*
28 *governor.*
29 *Justices of the peace, as herein provided for, shall have the same jurisdiction*
30 *and powers as are now conferred upon and exercised by justices of the peace, and*
31 *such as may be conferred by law.*
32 *They shall receive a salary for all services rendered in any judicial proceedings,*
33 *which shall be in lieu of all other compensation, and which shall be fixed by law*
34 *and paid by the proper county. All fees received for any such services shall be*
35 *paid into the respective county treasury for the use of the county.*
36 *Justices of the peace and aldermen now in office shall serve out their unex-*
37 *pired terms, after which time the offices of justice of the peace and alderman, as*
38 *they existed immediately prior to the adoption of this constitution, are hereby*
39 *abolished.*
40 *The general assembly shall, upon the adoption of this constitution, regulate the*
41 *costs in proceedings before justices of the peace, shall provide for the relief of*
42 *persons who by reason of poverty are unable to pay such costs, and shall enact*
43 *such other laws as may be necessary to fully carry the several provisions of this*
44 *act into effect.*

Insert after the word "inhabitants" in line 8 the words "*or fractional part thereof.*"

The CHAIRMAN. The chair moves the adoption of this amendment, which is to insert after the word "inhabitants" in line 8 the words "or fractional part thereof."

Mr. ENGLISH. Mr. Chairman: I second the motion.

The motion was agreed to.

The secretary read the amendment submitted in writing by William D. Forsyth, Esq., counsel of the Traffic Adjustment Company, Pittsburgh, Pa., as follows:

Amend the second sentence in paragraph 3 so that it shall read as follows:

In districts containing a city, *or in districts containing more than one person learned in the law*, justices of the peace shall have been residents of the city *or the district* for said period and shall be learned in the law.

This amendment was not called up.

The secretary read the amendment submitted by the chair at public hearings April 6, 1920, as follows:

Amend by striking from line 44 the word [act] and substitute therefor the word *section*.

Mr. REED. Mr. Chairman I move that the amendment be adopted.

Mr. THORPE. Mr. Chairman: I second the motion.

The motion was agreed to.

The secretary read the amendment submitted in writing by the Civic Club of Allegheny County, Pittsburgh, Pa., as follows:

Amend by striking out in paragraph 3, lines 21 and 22 the second sentence and inserting in lieu thereof the following: In districts containing a city, *or part of a city, justices of the peace shall be learned in the law.*

Mr. CARSON. Mr. Chairman: I move that the amendment be adopted.

Mr. FOX. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. CARSON. Mr. Chairman: Has that not been provided for anywhere else?

Mr. REED. Mr. Chairman: I do not think that is a good provision.

Mr. CARSON. Mr. Chairman: That relates to Philadelphia.

Mr. REED. Mr. Chairman: If you want to increase the opposition to this provision which abolishes justice of the peace and substitutes those new justices, you will do it by adding that they shall all be learned in the law, which cuts out a large body of worthy men who would like to run for office.

The CHAIRMAN. It seems to the chair that they ought not to be learned in the law in the country or in the smaller cities.

Mr. CARSON. We do not want to embarass you.

The CHAIRMAN. It seems to me we would get better men by taking them from the general citizenry.

This amendment not being called up, it will be dropped.

Mr. FOX. It is already in the section at the top of page 44. "In districts containing a city, justices of the peace shall have been residents of the city for said period and shall be learned in the law."

The CHAIRMAN. I think that there is an amendment providing to strike out the latter.

There being no motion to adopt this amendment, it will be dropped.

The secretary read the amendment submitted in writing by J. Lawrence Wethrill, Esq., of Philadelphia, as follows:

Substitute for the present section in the preliminary draft the following:

Section 11. The general assembly may abolish the office of justice of the peace or prescribe the mode of election, the power, the jurisdiction and the costs of proceedings in the justice of the peace courts and may alter or curtail the power already existing; provided, however, in districts containing a city, all judges or justices of the peace shall be learned in the law and the court shall be a court of record.

This amendment was not called up.

The secretary read the amendment suggested at public hearings by Robert P. Shick, Esq., representing the Constitutional Club, Philadelphia, and submitted in writing by James Collins Jones, Esq., and Owen J. Roberts, Esq., of Philadelphia, and A. Leo Weil, representing the Voters League, Pittsburgh, Pa., as follows:

Strike out.

This amendment was not called up.

The secretary read the amendment submitted in writing by Hon. H. R. Koch, of Pottsville, Pa., as follows:

Amend paragraph 5 so that it shall read:

Justices of the peace shall have such jurisdiction and powers as may be conferred by law.

This amendment was not called up.

The secretary read the amendment submitted in writing by the chairman as follows:

Amend by striking out on lines 27 and 28 the words [and shall be learned in the law].

Mr. KELLY. Mr. Chairman: I move that the amendment be adopted.

Mr. FOX. Mr. Chairman: I second the motion.

The motion was agreed to.

Mr. THORPE. Mr. Chairman: How would that read then, at the top of page 44 where would you stop?

The CHAIRMAN. It would read: "In districts containing a city the justices of the peace shall have been residents of the city for said period."

Mr. THORPE. Mr. Chairman: Stop at the word "period?"

The CHAIRMAN. Yes. I think that has to be amended further, but it can be done by the committee on style, and we might as well take it up now. I move to substitute, while I have it in mind, the word "city" for the word "district". It ought not to be limited to a city.

Mr. FISHER. Mr. Chairman: Would it not meet the situation if those words were stricken out and substitute the words "in said district?"

The CHAIRMAN. How would that read?

Mr. FISHER. Mr. Chairman: It would read: "In districts containing a city, justice of the peace shall have been residents in said districts."

Mr. TYSON. Mr. Chairman: Is that not covered in the beginning of line 22?

The CHAIRMAN. I think it is: I think that the whole thing, that is, "In districts containing a city, justices of the peace shall have been residents of the city for said period and shall be learned in the law," can come out. Is that what you had in mind, Dr. Thorpe?

Mr. THORPE. Mr. Chairman: I move that the sentence beginning with the words "In districts" shall be stricken out.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

The secretary read the amendment submitted in writing by the chairman as follows:

Amend by striking out in paragraph 1 on lines 1 and 2 the words [the general assembly shall provide for the division of the several counties] and substituting therefor the words *each county*.

Amend further by inserting on line 3 after the word "Philadelphia" the words *shall be divided by the court of common pleas of the judicial district in which the county shall be.*

Mr. FISHER. Mr. Chairman: I move that the amendment be adopted.

Mr. REED. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE V, SECTION 3-F (NEW).

Mr. FOX. Mr. Chairman: Before we recess I think I ought to call the attention of the commission to the fact that in brief number forty-four is a letter of Judge von Moschzisker giving his reasons for the suggestions contained on page 37 giving the supreme court power to send judges to another district. He said in his letter. "It seems to me it might be well to give the supreme court power, when necessity arises, to have a common pleas judge sent in to any particular district, to hold any court that he could hold in his own district. If there is no one able in the district to call another judge. As the law stands now, while a judge can call another man into his district, in a single judge district, if the judge dies. up to the time of a new appointment, there is no way of having the business of the district taken care of, and several years ago this caused considerable inconvenience in a certain part of the state."

I therefore call up the new section suggested by Judge von Moschzisker, section 3-F of article V, appearing on page 37 of the calendar.

The secretary read the proposed new section submitted in writing by Hon. Robert von Moschzisker, justice of the supreme court, Philadelphia, as follows:

Section 3-F (New).

The supreme court shall have power when necessity arises to send a judge of any court of common pleas to any district to hold a court that such common pleas judge could hold in his own district.

Mr. FOX. Mr. Chairman: I move that section 3-F of article V, on page 37, suggested by Judge von Moschzisker, be adopted.

Mr. ENGLISH. Mr. Chairman: I second the motion.

The motion was agreed to.

RECESS

Mr. KELLY. Mr. Chairman: I move that the committee do now take a recess until 8 o'clock this evening.

Mr. REED. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 5.40 o'clock P. M., the committee took a recess until 8 o'clock P. M.

AFTER RECESS.

The committee of the whole reconvened at 8 o'clock P. M.

The Chairman, William I. Schaffer, in the chair.

The CHAIRMAN. The hour fixed for the reconvening of the committee having arrived, the committee will be in order.

PROPOSED NEW SECTION.

Mr. REED. Mr. Chairman, at the earnest request of a member of the commission, I offer this proposed amendment, and may say it comes from Mrs. Pinchot.

The secretary read the suggested amendment as follows:

Section 3 (New). Powers of Government.

The power of all free governments extends to the protection of the health, morals and welfare of all citizens, the regulation of the conditions of labor and employment, and the determination of the minimum wage for women and minors.

The CHAIRMAN. The suggested amendment will be received and taken up later.

ARTICLE V, SECTION 12.

The committee of the whole proceeded to the consideration of section 12 of article V and suggested amendments.

The secretary read the section and amendment suggested at public hearings by Robert P. Shick, Esq., representing the Constitutional Club, Philadelphia, and also in writing by James Collins Jones, Esq., Owen J. Roberts, Esq., and Hon. Francis Shunk Brown, of Philadelphia, as follows:

Section 12. District Peace Courts in Philadelphia.—Boundaries.—Jurisdiction.—Disposition of Fines, Fees, Etc.

The general assembly shall divide the county of Philadelphia into eighteen numbered districts of compact territory, as nearly equal in population as shall be possible. After each United States decennial census the court of common pleas may change the boundaries of any districts and may create new districts, the number of which, however, together with the districts in existence, shall never exceed more than one for each one hundred thousand of population of said county.

A court not of record of police and civil causes, to be known as a district peace court, and with jurisdiction not exceeding three hundred dollars, is hereby established in each of such districts, to be composed of one judge learned in the law and who shall be known as a district peace judge. Such court shall have such civil and criminal jurisdiction as is from time to time exercised by justices of the peace. The general assembly may change their powers and jurisdiction, but no law shall be passed increasing the amount of their civil jurisdiction or imposing on them political duties. It shall also regulate the costs of proceedings in such courts and shall provide for the relief of persons who by reason of poverty are unable to pay such costs. Rules of practice and procedure shall be prescribed by the court of common pleas of Philadelphia county.

Judges shall be chosen at a municipal election by the qualified electors of the respective districts and shall hold office for a term of six years from the first Monday of January next ensuing, if they shall so long behave themselves well. Such judges shall have been inhabitants of their respective districts two years next before their election (unless absent on the public business of the United States or of this state) and shall reside in their respective districts during their terms of office. They shall be removed from office for reasonable cause found by the court of common pleas of the county after hearing and upon petition setting forth said cause, signed by at least five hundred electors of the proper district, or they may be removed in the manner prescribed by article VI of this constitution.

Vacancies in the office of district peace judges shall be filled by the governor.

The said judges shall receive a salary for all judicial services rendered by them, which shall be in lieu of all other compensation and which shall be fixed by law and paid by the county. All fees, fines and penalties in said court shall be paid into the county treasury.

Magistrates now in office shall serve out their unexpired terms, after which time the office of magistrates and magistrates' courts in Philadelphia are hereby abolished.

The general assembly shall, upon the adoption of this constitution, enact such laws as may be necessary to fully carry into effect the several provisions of this section.

Strike out.

Mr PEPPER. This is a resolution to strike out, is it not, sir?

The CHAIRMAN. To strike out the entire section, yes.

Mr. PEPPER. Mr. Chairman: As I recall it we have already stricken out of the tentative draft the provision for district peace courts.

The CHAIRMAN. We strke out the provision and call them district peace judges. There is an amendment farther down that strikes out district peace judges and calls them something else, calls them justices of the peace in Philadelphia.

Mr. PEPPER. Mr. Chairman: I meant to inquire whether the striking out of the section now under consideration is in line with our action taken previously.

The CHAIRMAN. Not necessarily, no sir. The next suggested amendment is one submitted by the chair, in italics on page 47, which will be withdrawn if section 12 is to be retained and modified by amendment, and therefore that section will be dropped. I will call the attention of the members of the commission, however, to the fact that that section of article V says "magistrates now in office shall serve out their unexpired terms, after which time the office of magistrate and magistrates' courts in the city of Philadelphia."

There being no motion to adopt this suggested amendment, it will be dropped.

The secretary read the amendment submitted by the chair at public hearings April 20, 1920, as follows:

Strike out the present section and substitute therefore the following:

Until the general assembly shall otherwise provide, in Philadelphia there shall be established, for each thirty thousand inhabitants, one court, not of record, of police and civil causes, with jurisdiction not exceeding one hundred dollars; such courts shall be held by magistrates whose term of office shall be six years and they shall be elected on general ticket at the municipal election, by the qualified voters at large; and in the election of the said magistrates no voter shall vote for more than two-thirds of the number of persons to be elected when more than one are to be chosen; they shall be compensated only by fixed salaries, to be paid by said county; and shall exercise such jurisdiction, civil and criminal, except as herein provided, as is now exercised by aldermen, subject to such changes, not involving an increase of civil jurisdiction or conferring political duties, as may be made by law. In Philadelphia the office of alderman is abolished.

The CHAIRMAN. This suggested amendment was submitted by the chair and is withdrawn.

The secretary read the amendment submitted by the chair at public hearings April 20, 1920, as follows:

Amend by striking out on line 9 after the word "one" the word [judge] and substituting therefor the word *person*, by striking out on line 10 the words [district peace judge] and substituting therefor the words *justice of the peace*, and by inserting on line 12 at the end of the sentence the words *in districts containing a borough or township.*

Amend paragraph 3 by striking out the first word [Judges] and inserting in lieu thereof the words *Such Justices of the peace.*

Amend paragraphs 4 and 5 by striking out the words [district peace judges] and inserting in lieu thereof the words *justices of the peace.*

Mr. REED. Mr. Chairman: Will you please tell Mr. Pepper and myself where we are at on this subject? This afternoon when Judge Gordon went away I understood the chair made him some sort of a promise. What was it he wanted us to do?

The CHAIRMAN. What I meant to convey to Judge Gordon was that we would retain this section but we would change the name of district peace judges to judges of the peace, the thing that they really are, and not put that title in section 1, and not make them constitutional officers in that sense, but provide for justices of the peace in the constitution; that is, that the general assembly shall divide the county into eighteen districts, and so on, and provide for justices of the peace in each district.

Mr. REED. Mr. Chairman: It is with great trepidation that I ask anything about Philadelphia, but I want the thing straightened out.

Mr. PEPPER. Mr. Chairman: Does not that reduce itself to this proposition, that we are making the court under consideration a constitutional court and the judges thereof constitutional officers, but we are omitting the court from the list of constitutional courts in section 1?

The CHAIRMAN. Yes. I do not pretend to have a familiarity with the Philadelphia situation. Here is the suggestion that I want to offer Mr. Pepper: My thought is that maybe we would handle this situation a little better, at least we would leave it open, by adopting the amendment in italics on page 47 until the general assembly shall otherwise provide, in Philadelphia there shall be established for each thirty thousand inhabitants, one court, not of record, of police and civil causes, with jurisdiction not exceeding one hundred dollars; such court shall be held by magistrate whose term of office shall be six years and they shall be elected on general ticket at the municipal election, by the qualified voters at large; and in the election of said magistrates no voter shall vote for more than two-thirds of the number of persons to be elected when more than one are to be chosen; they shall be compensated only by fixed salaries, to be paid by said county; and shall exercise such jurisdiction, civil and criminal, except as herein provided, as is now exercised by aldermen, subject to such changes, not involving and increase of civil jurisdiction of conferring political duties, as may be made by law. In Philadelphia the office of alderman is abolished." The present magistrates are continued under that. And then in section 12, turn back to section 12 on page 46, the general assembly may divide the county of Philadelphia into eighteen numbered districts; then you are continuing magistrates' courts until the general assembly shall otherwise provide, you are giving them the option to establish eighteen justice of the peace districts, or the general assembly can provide something else.

Mr. PEPPER. Mr. Chairman: May I suggest, sir, that if you take what the chair has just proposed that you are in effect including a lot of legislative matter in the constitution, because you begin in section 1 of article V by enumerating the constitutional courts and not including these magistrate or justice of the peace courts and declaring that the legislature may from time to time establish others. Then in the italicized matter on page 47 you are providing in the constitution that until the general assembly shall otherwise provide such and such thing shall happen. If those sections take their place in the constitution will it not be unnecessary to include the matter in section 12 of the constitution?

The CHAIRMAN. I think you are right, yes.

Mr. CARSON. Mr. Chairman: Before a vote is taken I would like to say a word or two, because we are very much embarrassed by the absence of Judge Gordon. This section 12 as reported, and which we have already adopted, was largely the plan which the Judge formulated, in fact, instead of saying largely, I may say it is the plan that the judge has formulated for the relief of a condition in Philadelphia county which has become almost intolerable. There are twenty-eight magistrates at the present time elected on a ticket at large. It is estimated there are about ten unnecessary magistrates and that the reduction of the magistrates to eighteen would be sufficient, but that they ought to be elected in their districts by the voters of the districts instead of the ticket at large, the thought being that a candidate in one part of the city where a man is running on a general ticket is absolutely unknown to the voters and is carried in on the general majority, whereas if the ballot had been confined to the electors in the district in which that man resided and from which he is

chosen it would defeat him. It was to remedy that that this section was drawn for the division of the county of Philadelphia into eighteen numbered districts, and that "A court not of record of police and civil causes, to be known as a district peace court, and with jurisdiction not exceeding three hundred dollars, is hereby established in each of such districts." The judge was to be learned in the law instead of being a layman as he is at present, they were to be paid salaries instead of being put on fees, and they were to be removed for reasonable cause found by the court of common pleas of the county after hearing and conviction upon setting forth said cause signed by at least five hundred electors. In case of vacancies the incumbent for the time being could be appointed by the governor. Now, that was a matter to which Judge Gordon had given very special and close attention. I thought that there was some sort of assurance that this section 12 should be reported out as adopted by us only changing the name of the office from district peace judges to justices of the peace, and the Judge, as I understand, assented to that, because the judges of the common pleas and orphans' court do not care to have their title diminished in value and dignity, or carried with officers of this jurisdiction.

The CHAIRMAN. I merely offer this as a suggestion. It has occurred to me that there is a grave question whether there ought to be permanently engrafted into the constitution any fixed system of this kind because the district peace judges, or as they are called, justices of the peace, may not work the system out, but you would have it permanently fixed in the constitution.

Mr. CARSON. Mr. Chairman: I would agree with you on that proposition.

The CHAIRMAN. If this is a sound proposition, then if we open section 12 with this phrase, "Until otherwise provided by law, the general assembly shall divide the county of Philadelphia," and so forth, so that they can try this system and changing the name of peace judges to justices of the peace, then you have not absolutely crystalized it in the constitution in such a shape in which it cannot be taken out if it does not work out well. I would not want it there so that we could not get it out.

To bring the matter forward, the chair will move that section 12 be amended by inserting the words "Until otherwise provided by law" at the beginning of the first paragraph of the section.

Mr. FOX. Mr. Chairman: I was about to make that motion in the language that you used on page 47 "Until the general assembly shall otherwise provide."

The CHAIRMAN. I think that is better language. You would have to change the language in section 12, "the county of Philadelphia shall be divided into eighteen numbered districts," and so forth.

Mr. CARSON. Mr. Chairman: The thought of that amendment on page 47, was to make those magistrates elective on the general ticket, which would not give us the relief which the Judge desires.

Mr. FOX. I think you misunderstand. We propose to take the section as Judge Gordon drew it and simply change the first line.

Mr. CARSON. That is acceptable.

Mr. REED. And change the name from district peace judge to justice of the peace.

The CHAIRMAN. Then the motion is to amend section 12 of article V by inserting in the first section at the head of it the words "Until the general assembly shall otherwise provide," and the section would be as it is with the change that will be made by the other amendments as to the title of these officers.

Mr. CARSON. That division to be designated by some sort of act of assembly.

Mr. FOX. The last three lines provide: "The general assembly shall, upon the adoption of this constitution, enact such laws as may be necessary to fully carry into effect the several provisions of this section."

Mr. CARSON. Yes.

The CHAIRMAN. Is the motion to adopt this amendment seconded?

Mr. CARSON. Mr. Chairman: I second the amendment.

On the question,

Will the committee agree to the amendment?

Mr. REED. Mr. Chairman: Is there anything in the article on legislation that would conflict with this as special legislation?

The CHAIRMAN. I thing not, sir, because Philadelphia is in a separate district as a county.

Mr. PEPPER. Mr. Chairman: Before we vote on this may I ask the chair to state the difference between the plan outlined in this italicized proposition on page 47 and the plan which is outlined in section twelve on page 46?

The CHAIRMAN. Under the italicized amendment the present magistrates would be continued until the legislature shall otherwise provide.

Mr. PEPPER. Mr. Chairman: It would be open, would it not, under the italicized provision, to the legislature, whenever the legislature in its wisdom saw fit, to act to adopt a plan substitutionary to the italicized matter, and that plan might either take the form outlined in section 12 or such other form as the legislature might determine?

The CHAIRMAN. Yes, sir.

Mr. PEPPER. May I ask whether really we should not leave our work in better shape, if, as a substitute for section 12, we were to move to adopt the italicized matter on page 47 drop out section 12 from our tentative draft altogether, and not indicate to the legislature what it may do in the way of setting up a court in substitution for magistrate court? I cannot quite get the thought which leads to the conclusion that we should in the first place indicate to the legislature a permissive system which they may or may not establish and then by a subsequent provision continue the magistrates' courts in operation, as we must do until some substitute is provided for. I am not able to see why when we continue the magistrates' courts we should give the legislature power to supersede them any time it pleases by any substitute it chooses to adopt. We have not covered any ground or undertaken to indicate to the legislature what it may do or may not do in the way of determining on a substitute. I am much impressed with the wisdom of the suggestion of the chair as it appears on page 47 and we would be, as I say, in much better shape if we adopt that as a substitute for section 12 instead of adopting both of them.

Mr. CARSON. Mr. Pepper, have you given thought to the very serious difference that exists between what is on page 46 and what appears in 47, and the fact that in the italicized portion on page 47 it provides that those magistrates shall be elected on the general ticket, that that is the very thing that Judge Gordon is striking at to get rid of a district representative on the general ticket, so that one part of the great city of Philadelphia would carry into office somebody that would not be elected in the district if he was running there? Under the present system the magistrates, twenty-eight in number, are elected on the general ticket, and that is the thing, if I understand Judge Gordon's position, he wishes to extirpate.

The CHAIRMAN. My thought about it is that this is a mandate to the legislature. This does away with the magistrates' courts as they now exist and they go out of office as their terms expires. Until the legislature provides otherwise it is a constitutional mandate that they must create these eighteen police districts. That would give this system a trial. If that is wrong (men who have carefully considered this subject said to me that they think on a trial this may not work out as well as it might), out of it will grow something that will be workable.

On the question recurring,

Will the committee agree to the amendment?

It was agreed to.

The secretary read the amendment submitted in writing by J. Lawrence Wetherill, Esq., of Philadelphia, as follows:

Substitute for the present section in the preliminary draft the following:

Section 12. *Magistrates now in office shall serve out their unexpired terms, after which time the office of magistrate and magistrates' courts in the city of Philadelphia are hereby abolished.*

The general assembly shall, upon the adoption of this constitution, enact laws conferring upon the courts of the city of Philadelphia now existing or which it may create the jurisdiction already exercised by the magistrates' courts in police and civil causes; provided, however, that all courts in the city of Philadelphia shall be courts of record and shall be composed of judges learned in the law.

The CHAIRMAN. The chair rules that the italicized amendment automatically drops because it is supplied by the amendment to section 12 just adopted.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE V, SECTION 14.

The committee of the whole proceeded to the consideration of section 14 of article V and suggested amendment.

The secretary read the section and amendment submitted in writing by James Collins Jones, Esq., and Owen J. Roberts, Esq., of Philadelphia, as follows:

Section 14. Appeals From Summary Convictions.

1 In all cases of summary conviction in this commonwealth or of judgment in suit
2 for a penalty before a judicial officer or court not of record, either party may ap-
3 peal to such court of record and on such terms as may be prescribed by law.

Strike out.

Mr. REED. Mr. Chairman: What is the purpose of that?

The CHAIRMAN. I suppose this is to provide against the special allowance of appeal.

Mr. KELLY. Mr. Chairman. That is the idea. Under the old Constitution there could be no appeal on summary conviction without allowance by the court, and in the meantime the victim was sent to jail and subject to an outrage of fine, or at least a fine which was outrageous under the circumstances, otherwise he would have to be a day or two in jail before he could get relief. This provision makes it possible for the legislature to provide a method of appeal without the necessity of having an allowance by the court.

Mr. FISHER. Mr. Chairman: I move the amendment be adopted.

Mr. KELLY. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

The CHAIRMAN. The motion is that section 14 of article V be stricken out.

Mr. KELLY. Mr. Chairman: I did not second that. I do not think it requires an amendment. It is a change from the constitution of 1873 in the one respect the chair mentioned. I am not prepared to say if both this and the provision of the constitution of 1873 was out that the remedy would be with the legislature. I am not prepared to say that possibly that would be so, in which event possibly they could both go out because the thought that the committee had in mind in making the change was to remedy the matter that the chair stated.

The CHAIRMAN. Then the chair hears no motion to call up this amendment which would strike out section 14, and the amendment will be dropped.

ARTICLE V, SECTION 13.

The committee of the whole proceeded to the consideration of section 13 of article V and suggested amendment.

The secretary read the section and amendment submitted in writing by James Collins Jones, Esq., and Owen J. Roberts, Esq., of Philadelphia, as follows:

Section 13. Disposition of Fines, Fees, Etc.

Add a new section as follows:

All fees, fines and penalties in any court shall be paid into the public treasury.

Mr. CARSON. Mr. Chairman: How does it get that number?

The CHAIRMAN. I think it is very likely number 15.

Mr. REED. Mr. Chairman: Is not that a matter for the legislature?

The CHAIRMAN. Whatever the number is it will be given.

Mr. REED. Mr. Chairman: Is not that a matter of legislation?

The CHAIRMAN. It would seem to be so. The chair hears no motion to call up this suggested amendment, and it will be dropped.

ARTICLE V, SECTION 16-A (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 16-A of article V.

The secretary read the section and amendment submitted in writing by Hon. H. G. Wasson, of Pittsburgh, Pa., and by the Civic Club of Allegheny County, Pittsburgh, Pa., as follows:

Section 16-A (New).

In every court composed of two or more judges required to be learned in the law, including the supreme court, each judgeship shall, for the purpose of election or appointment thereto, be deemed a separate office and be distinguished by number from the other judgeships in the same court. Judgeship existing immediately after this constitution becomes effective shall be taken to be numbered in the respective courts in the order of the seniority in commission of the judges occupying them.

Mr. THORPE. Mr. Chairman: I move that the amendment be adopted.

Mr. REED. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. REED. Mr. Chairman: I would like to explain that amendment. We have in Allegheny county fourteen judges, I think it is fifteen, and last fall there came up five judges for re-election. There were six nominees and six aspirants. Now there were several of those judges who had been on the bench. The contest really narrowed itself down to three men, that is, two in office and one who wanted in. But the result of the present system was that these judges who were not in the estimation of the people in any jeopardy had to go out and make a thorough canvass at considerable expense to themselves. The result of the election was that Judge Wasson drew the smaller number of votes and lost the election. He, in thinking it over a good deal, and for the benefit of his fellow-judges, to avoid a similar situation in the future, has suggested this amendment, so that when there is more than one judge to be elected they shall each run separately, be considered by separate numbers, and the contest will be centered on some one or two of the judges, and the others will, as they should, very often go in without any expense to themselves or any expense to their feelings. I think that is a meritorious provision. For instance, we had one judge there, Judge Evans, for whom there would have been no contest, and he had to go out and make an active canvass, although no one wanted to beat him, for fear that by neglecting it he would get the lowest number of votes and find himself out.

Mr. THORPE. Mr. Chairman: This matter is a subject of very serious consideration. I had the pleasure and opportunity of meeting with Judge Wasson, Mr. Alter and Judge Shaffer, and this matter was very thoroughly gone over, and we inquired into the use of the word judgeship. I do not presume to add anything to what Judge Reed has just said, but I want as a matter of fairness to say this, that the lack of specification of the judgeship produced a very unfortunate confusion and lost us the services of men who were really entitled to be continued in office. If I am permitted to say it—I see Mr. Alter is not here and I do not think I betray confidence or misrepresent Mr. Alter by saying that this had his hearty support, because I was present when we went over this article suggested by Judge Wasson. The purpose was to make the matter distinctly separate and clear in the minds of the public so as to make it exactly clear for whom they were voting that they can choose between the man of experience and the stranger of no experience. Is that right, Judge?

Mr. REED. That is right.

Mr. THORPE. Judge Wasson was in my study several times and we considered the matter with great care, and he being one of the defeated parties was really in a position to be very consistent.

Mr. CARSON. How is the numbering done? Who does the numbering, the election officers?

Mr. REED. According to seniority.

Mr. CARSON. I know, but that must be indicated to the election officer in some way.

The CHAIRMAN. That would be indicated by the secretary of the commonwealth, I suppose, who would so certify the names on the ballot.

Mr. THORPE. Is not that answered in the last sentence of the proposition?

Mr. CARSON. Ought that word to be in the singular number in the last sentence? You mean judgeships immediately after this constitution becomes effective shall be numbered in their respective courts in the order of the seniority in commission of the judges occupying them.

Mr. THORPE. Probably this man who has favored us by opportunity for typographical corrections is guilty in this respect.

On the question recurring,

Will the committee agree to the motion?

It was agreed to.

ARTICLE V, SECTION 17.

The committee of the whole proceeded to the consideration of section 17 of article V and suggested amendments.

The secretary read the section and amendment submitted in writing by Hon. Alexander Simpson, Jr., of Philadelphia, as follows:

Section 17. Priority of Commission.

1 Should any two or more judges of the supreme court, or any two or more judges
2 of the court of common pleas for the same district be elected at the same time,
3 they shall, as soon after the election as convenient, cast lots for priority of com-
4 mission, and certify the result to the governor, who shall issue their commissions
5 in accordance therewith.

Substitute for the present section the following:

The justice or judge oldest in continuance service shall be the chief justice or president judge of each court; he shall preside over the deliberations of the court, but neither he nor any other judge shall have or exercise any of the powers or privileges except in common with all the other members of the court. If two or more justices or judges, not then members of a court, are elected or appointed at the same time, they shall draw lots for priority of commission and shall certify the result to the governor, who shall issue their commissions accordingly.

The CHAIRMAN. This is a matter the general subject of which I think has been referred to the committee on style.

Mr. CARSON. Mr. Chairman: I do not know why it gives the gentlemen so much trouble about stating who shall be the chief justice or the presiding judge, but there is something more in Justice Simpson's suggestion for substituting than the mere question of form. I notice that section 17 seems to relate to only two or more judges of the supreme court. We have put the superior court already in.

The CHAIRMAN. There is an amendment immediately following that item about the superior court.

Mr. CARSON. Yes, I had not seen that.

Mr. REED. Is not there in the previous provisions the provision that the judge oldest in commission should be president judge?

The CHAIRMAN. The committee on style is to take up the different provisions and make the language the same.

Mr. REED. Section 2 reads: "The justice oldest in commission shall be chief justice."

The CHAIRMAN. This amendment not being called up, under the ruling of the chair it will be dropped.

The secretary read the amendment submitted in writing by the Legislative Reference Bureau, Harrisburg, Pa., as follows:

Amend by inserting after the word "supreme" on line 1 the words *or superior*.

Mr. FOX. Mr. Chairman: I move that the amendment be adopted.

Mr. KELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE V, SECTION 18.

The committee of the whole proceeded to the consideration of section 18 of article V and suggested amendments.

The secretary read the section and amendment submitted in writing by G. W. Williams, Esq., Pittsburgh, Pa., as follows:

Section 18. Compensation of Judges.

1 The justices of the supreme court, the judges of the superior court and the
2 judges of the several courts of common pleas, and all other judges required to be
3 learned in the law, shall at stated times receive for their services an adequate
4 compensation, which may be increased at any time but not diminished during the
5 term for which a justice or judge shall have been appointed or elected. This
6 compensation shall be fixed by law and paid by the state, unless otherwise pro-
7 vided herein.

Amend by striking out on line 4 the words [be increased at any time] and by inserting after the word "not" on the same line the word *be*.

This amendment was not called up.

The secretary read the amendment submitted in writing by James Collins Jones, Esq., and Owen J. Roberts, Esq., of Philadelphia, as follows:

Amend by inserting on line 1 after the word "justices" the words *and judges*.

Strike out on lines 1 and 2 the words [of the supreme court, the judges of the superior court and the judges of the several courts of common pleas, and all other judges].

Strike out on line 3 the words [an adequate] and insert the article *a*.

Strike out all of the section after the word "compensation" on line 4 and insert the following: *which shall be fixed by law and paid by the state, and shall not be diminished during their continuance in office.*

So that the section shall read:

The justices and judges required to be learned in the law shall, at stated times, receive for their services a compensation which shall be fixed by law, and paid by the state, and shall not be diminished during their continuance in office.

This amendment was not called up.

The secretary read the amendment submitted in writing by the Civic Club of Allegheny County, Pittsburgh, Pa., as follows:

Amend by striking out on lines 4 and 5, the words [which may be increased at any time but not diminished during the term for which a justice or a judge shall have been appointed or elected].

Amend further by returning the following provision of the present constitution to the section: *They shall receive no other compensation, fees or perquisites of office for their services from any other source or hold any other office of profit under the United States, this state, or any other state.*

Mr. CARSON. Mr. Chairman: They are all the same thing.

The CHAIRMAN. In substance, right straight down to section 19.

Mr. FOX. Mr. Chairman: I think that perhaps this amendment ought to go in: "They shall receive no other compensation, fees or perquisites of office for their services from any other source or hold any other office of profit under the United States, this state, or any other state."

Mr. REED. We have been getting along one hundred years with out it.

Mr. FOX. Mr. Chairman: It is in the present constitution.

Mr. CARSON. Mr. Chairman: Is it not in here.

The CHAIRMAN. Is the motion of Judge Fox to call this amendment up seconded?

Mr. THORPE. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. REED. Mr. Chairman: I would like to know whether the chairman of the judiciary committee left that out or the printer.

Mr. CARSON. Judge Reed if I thought you were a candidate for office I certainly would not have attempted to include it, but I thought it really was in.

Mr. FOX. I guess the printer left that out.

Mr. CARSON. Mr. Justice Fox and Judge Kelly will remember that we threw together two or three items and consolidated them, and possibly in the consolidation it dropped out.

On the question recurring,

Will the committee agree to the motion?

It was **agreed to.**

The secretary read the amendment submitted in writing by Hon. Francis Shunk Brown, of Philadelphia, as follows:

Strike out.

This amendment was not called up.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE V, SECTION 19.

The committee of the whole proceeded to the consideration of section 19 of article V and suggested amendment.

The secretary read the section and suggested amendment as follows:

Section 19. Residence of Judges.

1 The justices of the supreme court and the judges of the superior court during
2 their continuance in office shall reside within this commonwealth; and the other
3 judges during their continuance in office shall reside within the districts from
4 which they shall be respectively elected.

Amend by striking out on lines 1 and 2 the words [and the judges of the superior court].

The CHAIRMAN. Unless there is a motion this amendment will be dropped, because we have now included the superior court judges in the constitution, and this obviously ought not to go in. If there be no objection, this amendment will be dropped. The chair hears none.

ARTICLE V, SECTION 21.

The committee of the whole proceeded to the consideration of section 21 of article V and suggested amendments.

The secretary read the section and amendment submitted by the Chair as follows:

Section 21. Duties of Judges, Etc.

1 No duties shall be imposed upon any judge except such as are judicial. The
2 general assembly shall enact such legislation as is necessary to transfer the ap-
3 pointing power now vested in courts or judges, and after such transfer no court
4 or judge shall exercise any power of appointment except as herein provided.

Amend by striking out all after the word "power" on line 3 and inserting the words *to non-judicial officers or not connected with the county or their administration.*

Mr. CARSON. Mr. Chairman: You will observe that that is a matter which so far as the suggestions are concerned, occupies a whole page, page 51. The substance of the objection is the same but the phraseology in which it is expressed is varied by the several objectors. As I read it there is a general concurrence in the view that no duties except those strictly judicial shall be imposed upon the court; but there is an effort to except certain bodies, and there are various phrases used for that purpose. The one probably which has been most thoughtfully prepared is that on the middle of page 51, by Mr. Jones and Mr. Roberts.

The CHAIRMAN. Is the amendment at the bottom of page 50 called up by any member of the commission?

Mr. FISHER. Mr. Chairman: I call that up. I understand that is the one submitted by Mr. Jones and Mr. Roberts.

The CHAIRMAN. No, the one submitted by them is in the middle of page 51.

Mr. FISHER. Mr. Chairman: That is the one I am calling up.

The CHAIRMAN. I want to get the other one disposed of.

Is the amendment at the bottom of page 50 called up? This amendment is not called up, and will be dropped.

The secretary read the amendment submitted in writing by Hon. Alexander Simpson, Jr., of Philadelphia, Pa., and by the Civic Club of Allegheny County, and H. K. Siebeneck, Esq., of Pittsburgh, Pa., as follows:

Strike out this section and substitute therefor the following:

The judges of each court shall appoint their prothonotary, clerks (except register of wills), criers and tipstaves, and such trustees, guardians, depositories, masters, examiners, auditors, receivers and other officers as shall be needed to administer the estates over which they have control, or to transact pending litigation, but from and after the adjournment of the first session of the legislature following the adoption of this constitution, they shall make no other appointments and perform no other duties except such as are judicial.

Mr. CARSON. Mr. Chairman: It strikes me that that suggestion by Justice Simpson and one by Messrs. Jones and Roberts, and the latter one by Mr. Keating, and the one by Francis Shunk Brown ought to be in some way consolidated; they have the same thought. It would not take very much time to put them together and present the composite result. The committee on style could do that work provided we affirm the proposition that with this modification we are in favor of restricting the power of the judges.

Mr. REED. Mr. Chairman: You have constantly objections from all directions; for instance, there is a letter here from Mr. Gordon as president of the law library.

Mr. CARSON. Would you consider him in the light of a law officer?

Mr. REED. Mr. Gordon writes: "This matter is of great importance to the Allegheny law library. I am chairman of the law library committee of Allegheny county. My attention has been called by our librarian to the proposal amendment to article V, section 21, and reciting the section. Our law library is a county institution supported by contributions made by the county commissioners, but it is managed by a committee of five who were appointed by the judges of the common pleas court. As I understand it this proposed amendment, if adopted, would prevent the judges from appointing the members of our committee and turn over the management of our law library to some other appointed board, probably because these last words are 'any power of appointment except as herein provided.' It seems to me there should be some carefully worded exception placed in this article at once so that the judges would not be prevented from exercising the power of appointment. While my own view upon this subject may be rather radical, I have a very positive conviction that the judges should have the power of appointing the clerk of the criminal court, the clerk of orphans' court, the prothonotary of the common pleas court, the prothonotaries of the supreme and superior courts, other than stenographers, criers and tipstaves, court officers, and least but not last a law library committee. I should think it might be possible to frame something of this section which would have a general wording and would except from the operation of this section such a committee. Then in that connection we all perhaps in a sense are a part of the judicial machinery of the state."

Mr. CARSON. Mr. Chairman: That largely corresponds with the list mentioned in Judge Simpson's suggestion except that the clerk of the criminal court the clerk of the court of quarter session is a county officer elected on the popular ticket.

Mr. REED. Then you have Mr. Cuyler's trust whatever you call it, park commission or something, and you have the Girard Trust.

Mr. CARSON. The Girard Trust I think comes under that provision about trustees, guardians, tipstaves, masters, and so forth.

Mr. REED. You have Senator Fisher's objection on behalf of the country counties. I think you have so many exceptions that I think we should fall back on the original proposition, which was that the supreme court should not appoint anybody, and probably let it go at that. I would use the old provision.

Mr. FISHER. Mr. Chairman: Since we adopted this provision when it was orignally before the commission I have not changed my mind. I believe that it is still a mistake to strip the courts, and particularly the country courts, of all appointive powers. However, it may be that abuses have arisen in Philadelphia, where abuses do sometimes arise; but I would suggest that the chair refer all these provisions to the committee on style to see if they cannot merge them and get something that is reasonably satisfactory all around. I have heard from a number of the country judges, and they protest against the provision that was inserted heretofore. You will find there is a great deal of opposition unless we make some modification. I make that suggestion or motion if necessary.

Mr. REED. Mr. Chairman: I second the motion to refer it to the committee on style.

Mr. CARSON. Mr. Chairman: I assent to that.

On the question,

Will the committee agree to the motion?

Mr. MUNCE. Mr. Chairman: As you know, I have been giving the matter of the mode of electing county commissioners some attention. I find after communicating with all the counties and having received very large response from them, that practically the only objection they have to the new plan was the one of passing over to the governor the appointing to vacancies that might occur. That seemed to be the objection on the part of nearly every one; otherwise six out of every seven were for the amendment as offered by Mr. Alter.

The CHAIRMAN. The motion, as the chair understands it, of Senator Fisher, seconded by Mr. Carson, is that all the proposed amendments to section 21 are to be referred to the committee on style.

Mr. PEPPER. Mr. Chairman: Before that motion is put I should like to suggest the desirability of making some disposition of this matter at least before the Commission adjourns to-morrow. If this goes to the committee on style the committee will find itself entrusted with a responsibility which really has nothing to do with style. It is one of the most important matters of substance that has come before us, and I am sure a committee that is selected for the purpose of discharging the usual functions of a committee on style will be a good deal embarassed when they come to a matter about which there is such a difference of opinion as there is on this. Would it not be equally agreeable if this question were referred back to Mr. Carson's committee, or to some committee to be especially appointed by the Chair, for the purpose of reporting to-morrow a definite proposal which will not indeed combine the irreconcilable elements in these propositions, but will at least be prepared in the light of all of them? At any rate, do not let us delude ourselves by supposing it is a matter of style.

The CHAIRMAN. Is that motion seconded that a special committee be appointed to take up this matter?

Mr. PEPPER. Mr. Chairman: I do not wish to make such a motion unless it is agreeable to Senator Fisher, and if Mr. Carson's committee were willing to undertake that responsibility no special committee that could be appointed would be half so good.

Mr. CARSON. Mr. Chairman: With Senator Fisher on the committee and Judge Reed they could state how it affects their particular counties. As I understand it, the objection from Allegheny county is that it deprives the judges of the power to appoint the law library committee.

Mr. REED. Mr. Chairman: You do not need me on that committee. I have told you all I know.

Mr. CARSON. Mr. Chairman: If Senator Fisher will make out that list or give a talk to us about what powers are endangered, we know exactly in Philadelphia where the powers are exercised which ought not to be continued. The Girard trust, trusts arising under the law, or deed, or by act of assembly, the park commission, I am not clear about that, they do not arise under any deed or any law. Mr. Pepper is more familiar with that part of it than I am, because he is the solicitor for the park commission.

Mr. ENGLISH. Mr. Chairman: If it is the wish of General Carson, I should be very glad to second Mr. Pepper's motion for the creation of a special commmittee to report to-morrow some form for this section which will enable the commission to vote definitely on the matter of substance involved. There has been no section in the tentative draft which caused more reaction in the section of the country from which I come than the section under discussion. As I stated before, when the matter was before the commission, the water-works of the city of Erie are in the custody of a board of three commissioners appointed according to the provisions of a special act of assembly that was passed more than fifty years ago. The system seems to have worked very well. The commissioners are appointed by the court of common pleas. I know that there is a very considerable opposition to anything in the constitution that would take away from our court the power of appointing commissioners of the water-works. I merely refer to it as one of the specific cases, which perhaps are numerous throughout the commonwealth, and which should be met, it seems to me, in some form, if a considerable body of opposition is to be overcome. I may say incidentally that it seems to me the substitute proposed by Mr. Jones and Mr. Roberts would cover our case, because it reserves to the court the right to appoint trustees over public property, which is our case.

The CHAIRMAN. May I ask Mr. Pepper whether Mr. Roberts' and Mr. Jones' suggestion covers the situtation as Mr. Pepper views it in Philadelphia?

Mr. PEPPER. Mr. Chairman. No; that suggestion limits the restriction as it is limited in the present constitution, namely, in the case of the supreme court. That is my recollection, and the situation that we have in Philadelphia is very remarkable, I take it; also the educational system through the board of education.

The CHAIRMAN. May I see if I do understand this? It reads: "No duties shall be imposed by law upon the supreme court or any of the judges thereof except as are judicial. The several courts shall have the power to appoint court officers and persons required to be appointed in the course of judical proceedings, but they shall have no further appointive powers except that they may be authorized by any present or future law to appoint boards of viewers, trustees of public property and the agents of such trustees."

Mr. PEPPER. Mr. Chairman: As I understand it there is a provision in that section as proposed by these gentlemen that no duties except such as are judicial shall be imposed upon the supreme court. The implication is that duties which are extra-judicial may be imposed upon the judges of other courts.

Mr. CARSON. Yes, that is a sound conclusion.

Mr. PEPPER. Then there is an explicit provision that the several courts, which I take it includes the supreme court, shall have the power to appoint court officers, persons required to be appointed in the course of judicial proceedings, and they shall have no further appointive powers except that they may be authorized by present or future law to appoint boards of viewers, trustees of public property and the agents of such trustees.

Mr. CARSON. That is written from the Philadelphia point of view, Mr. Pepper; it does not cover what Mr. English referred to.

Mr. PEPPER. Quite so. We must take into account the serious questions that have been raised by Senator Fisher and Mr. English. It seems to me that the definition of the duty as being a judicial duty is too vague a definition to have a safe place in the constitution. It seems to me that we shall have to devise some method of defining the sphere of duty of a judge, and for one I do not feel competent just as we are sitting here with our minds full of many things to propose the kind of a section which would be worthy of our consideration, and I am quite satisfied that none of these that have so far been proposed meets the views of all the members of the Commission.

Mr. STACKPOLE. Mr. Chairman: This has been a regular field day, for the lawyers of the commission, and those who are laymen have sat at the feet of Gamaliel hoping to get information. It strikes me that the very fact that these lawyers are not able to agree upon this proposition indicates the seriousness of it. Those who are laymen believe that the judges are not so sacred that they need to be relieved of this duty. I am sorry that they have trouble in Philadelphia. Perhaps there might be something done to relieve that situation, but Mr. Fisher has correctly interpreted the country sentiment with respect to judges, and I think it would be a most serious mistake to deprive the judges, particularly in the country districts, of this right to appoint such persons as ought to be designated for important duties, and I hope that if this committee is appointed it will give very serious consideration to that part of this discussion. I think we ought to proceed very slowly particularly at this time in removing the judges from the more intimate touch of the people that they have through these appointments. We do not want to have our judges so far removed from our people that they are in a class aloof. We want them to get down among the people to the extent at least of understanding how the people are thinking, so that they may serve the better in these important matters that come up to them through the appointive power and the supervision of those things that are vital in a community. I only suggest it as a layman: it may be aside form what we are now considering, but I feel that it is a matter requiring a great deal of consideration.

Mr. FISHER. Mr. Chairman: It seems that we have a problem before us which no one is prepared to solve to-night. It was with that in view that I made the motion to refer it to the committee on style so that there would be ample time for that committee to give consideration to the surrounding circumstances and evolve, if possible, something that would be reasonably satisfactory. I like Mr. Pepper's suggestion, however, that a special committee be appointed to bring something before the commission, if possible, before it adjourns. With that in view I will withdraw my motion, with the consent of Judge Kelly, and allow the motion for consideration to be that put by Mr. Pepper and seconded by Mr. English for the appointment of a special committee.

Mr. KELLY. Mr. Chairman: I will withdraw my second to the motion.

The CHAIRMAN. Then the motion before the committee is that a special committee be appointed to consist of how many, three?

Mr. CARSON. Better have five on it.

On the question recurring,

Will the committee agree to the motion?

It was agreed to.

The CHAIRMAN. The chair appoints as such committee Mr. Pepper, Judge Reed, Mr. Carson, Senator Fisher and Mr. English.

That will dispose, for the present, of everything relating to section 21.

There is also an amendment at the bottom of page 51 suggested by Mr. A. Leo Weil, which the committee can take into consideration as to whether or not it is a necessary amendment to be incorporated.

The secretary read the amendment submitted in writing by James Collins Jones, Esq., and Owen J. Roberts, Esq., of Philadelphia, as follows:

Amend by striking out the whole section and substituting the following:

No duties shall be imposed by law upon the supreme court or any of the judges thereof except such as are judicial. The several courts shall have the power to appoint court officers and persons required to be appointed in the course of judicial proceedings, but they have no further appointive powers except that they may be authorized by any present or future law to appoint boards of viewers, trustees of public property and the agents of such trustees.

This amendment was not called up.

The secretary read the amendment suggested in writing by J. Percy Keating, Esq., of Philadelphia, as follows:

Amend by inserting in the second sentence on line 2 after the word "transfer" the words *revoke or abolish*, by striking out on line 3 the word [transfer] and inserting in lieu thereof the words *such action by the general assembly.*

This amendment was not called up.

The secretary read the amendment submitted by Hon. Francis Shunk Brown, of Philadelphia, at public hearings April 13, 1920, as follows:

Amend by adding, as a second paragraph, the following:

Judges may be authorized by law to appoint trustees of public property, viewers, park commissioners and the clerks and the other officers and employes of their respective courts.

This amendment was not called up.

The secretary read the amendment submitted in writing by A. Leo Weil, Esq., representing the Voters League, Pittsburgh, Pa., as follows:

Amend by inserting after the word "judge" on line 1 the words *of any court of record.*

This amendment was not called up.

ARTICLE V, SECTION 22.

The committee of the whole proceeded to the consideration of section 22 of article V and suggested amendments.

The secretary read the section and amendment suggested at public hearings by Robert P. Shick, Esq., representing the Constitutional Club, Philadelphia, as follows:

Section 22. Orphans' Court.

1 In every county wherein the population shall exceed one hundred and fifty
2 thousand the general assembly shall, and in any other county may, establish a
3 separate orphans' court to consist of one or more judges who shall be learned in
4 the law, which court shall exercise all the jurisdiction and power vested in or
5 which may hereafter be conferred upon the orphans' court, and thereupon the

6 jurisdiction of the judges of the court of common pleas within such county in
7 orphans' court proceedings shall cease and determine. In any county in which a
8 separate orphans' court shall be established the register of wills shall be clerk of
9 such court and subject to its directions in all matters pertaining to his office; he
10 may appoint assistant clerks, but only with the consent and approval of said
11 court. All accounts filed with him as register or as clerk of the said orphans'
12 court shall be audited by the court without expense to parties, except where all
13 parties interested in a pending proceeding shall nominate an auditor whom the
14 court may, in its discretion, appoint. The orphans' court shall have such juris-
15 diction as is now or may hereafter be provided by law.

Strike out.

This amendment was not called up.

The secretary read the amendment submitted in writing by Hon. Russel C. Stewart, of Easton, Pa., as follows:

Amend by striking out on line 2 after the word "assembly" the words [shall, and in any other county].

Mr. FOX. Mr. Chairman: If I understand Judge Stewart's view about this, it ought not be obligatory except in counties having more than one hundred and fifty thousand inhabitants. For instance, in our own county we have about reached that, and I do not think we need a separate orphans' court.

I move the adoption of the amendment.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

The secretary read the amendment suggested by Hon. Francis Shunk Brown, of Philadelphia, at public hearings April 13, 1920, as follows:

Amend by adding on line 7 after the word "determine," the words: *Where there are two or more judges the judge longest in service in such separate orphans' court shall be the president judge.*

This amendment was not called up.

The secretary read the amendment submitted in writing by H. K. Siebeneck, Esq., of Pittsburgh, Pa., as follows:

Amend by adding at the end of first sentence:

These judges shall be elected by the qualified electors of the district. They shall hold office for a term of ten years, if they so long behave themselves well.

Mr. REED. Mr. Chairman: I move the amendment be adopted.

Mr. THORPE. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. REED. Mr. Chairman: I move that because curiously enough Mr. Siebeneck is right. The former constitution provided that all judges of courts of record should be elected for ten years; then the committee struck that out and provided that the judges of the courts of common pleas should be elected for ten years, and they forgot to give the orphans' court judges any term at all.

On the question recurring,

Will the committee agree to the motion?

It was agreed to.

The secretary read the amendment as submitted in writing by the Civic Club of Allegheny County, Pittsburgh, Pa., as follows:

Amend by adding at the end thereof the following:

These judges shall be elected by the qualified electors of the district, and they shall hold office for a term of ten years if they shall so long behave themselves well. The judge oldest in commission shall be the president judge, but any president judge re-elected in the same court shall continue to be the president judge thereof.

The CHAIRMAN. Because of the action on the adoption of the previous amendment, this suggested amendment will be dropped.

Mr. REED. Mr. Chairman: Where is the one that the oldest judge shall be the president judge?

The CHAIRMAN. That whole question was referred to the committee on style to make the language of each section the same.

The secretary read the amendment submitted in writing by James Collins Jones, Esq., and Owen J. Roberts, Esq., of Philadelphia, as follows:

Amend by striking out the first part of the section to the word "establish," on line 2 and by inserting the words: *The general assembly may establish in any county.*

Amend further by striking out all after the word "appoint" on line 14.

The CHAIRMAN. That is covered by the amendment of Judge Stewart, and therefore unless there is objection, this amendment will be dropped. The chair hears none and the amendment is dropped.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE V, SECTION 22-A (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 22-A of article V.

The secretary read the proposed new section submitted in writing by Hon. R. A. Kennedy, president judge of the Allegheny county court, as follows:

Section 22-A (New). County and Municipal Courts.

County and municipal courts shall remain as now by law established, having such jurisdiction as is now or may hereafter be provided by law.

Mr. REED. Mr. Chairman: I hope we understand what has been done by adopting Judge Stewart's amendment. You prevent the legislature from establishing an orphans' court in any county that has less than one hundred and fifty thousand inhabitants. I do not know whether that is important or not. Senator Fisher says it is all right, and I have nothing further to say.

I move the adoption of this amendment, to find out whether it is necessary. I do not think after what we have done this afternoon it is necessary.

Mr. CARSON. Mr. Chairman: I was going to say refer back to page 32. You will find we practically closed it.

Mr. REED. Mr. Chairman: I will withdraw the motion.

The CHAIRMAN. The chair hears no motion to call up this suggested amendment, and it will therefore be dropped.

ARTICLE V, SECTION 23.

The committee of the whole proceeded to the consideration of section 23 of article V and suggested amendment.

The secretary read the section and amendment submitted in writing by James Collins Jones, Esq., and Owen J. Roberts, Esq., of Philadelphia, as follows:

Section 23. Style of Process.—Indictments.

1 The style of all process shall be "The Commonwealth of Pennsylvania." All
2 prosecutions shall be carried on in the name and by the authority of the Com-
3 monwealth of Pennsylvania, and conclude "against the peace and dignity of the
4 same."

Strike out.

This amendment was not called up.

ARTICLE V, SECTION 25-A (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 25-A of article V.

The secretary read the proposed new section submitted in writing by James Collins Jones, Esq., and Owen J. Roberts, Esq., of Philadelphia, as follows:

Section 25-A (New). Continuance of Present Organization, Jurisdiction and Procedure.

Subject to the foregoing provision of this article, the organization and jurisdiction of all courts and the procedure therein shall remain as at present established until otherwise provided by law.

The CHAIRMAN. In the light of what we have already done it seems to the chair that this would be an unnecessary amendment.

This amendment was not called up.

ARTICLE V, SECTION 26.

The committee of the whole proceeded to the consideration of section 26 of article V, and suggested amendments.

The secretary read the section and amendment submitted in writing by James Collins Jones, Esq., and Owen J. Roberts, Esq., of Philadelphia, as follows:

Section 26. Uniform Laws for Courts.—Certain Courts Prohibited.

1 All laws relating to courts shall be general and of uniform operation, and the
2 organization, jurisdiction and powers of all courts of the same class or grade, so
3 far as regulated by law, and the force and effect of the process and judgments of
4 such courts, shall be uniform; and the general assembly is hereby prohibited from
5 creating other courts to exercise the powers vested by this constitution in the
6 judges of the courts of common pleas and orphans' courts.

Strike out.

This amendment was not called up.

The secretary read the amendment submitted in writing by A Leo Weil, Esq., representing the Voters League, Pittsburgh, Pa., as follows:

Amend by striking out all after the word "uniform" on line 4.

This amendment was not called up.

ARTICLE V, SECTION 27-A.

The committee of the whole proceeded to the consideration of section 27-A of article V, and suggested amendment.

The secretary read the section and amendment submitted in writing by the Civic Club of Allegheny County, Pittsburgh, Pa., H. K,

Siebeneck, Esq., of Pittsburgh, Pa., Hon. R. H. Koch, of Pottsville, Pa., James Collins Jones, Esq., and Owen J. Roberts, Esq., of Philadelphia as follows:

Section 27-A.

1 The general assembly shall provide by law, applicable to all courts of record
2 and such other courts as it may deem proper, for the employment of counsel who
3 shall be paid by the county under an order of court, and also for relief from the
4 payment of the costs of litigation in the case of any litigant in said courts who
5 shall be unable without great hardship to employ such counsel and pay such costs,
6 or either; and the general assembly may also provide that the costs of litigation
7 may be classified or graded according to the amount in controversy.

Strike out.

This amendment was not called up.

ARTICLE V, SECTION 27-B (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 21-B of article V.

The secretary read the proposed new section submitted by the Secretary as follows:

Section 27-B (New). (To be submitted separately to the electorate).

The governors shall nominate and by and with the advice of the majority of all the members of the senate appoint the judges of all courts of record.

The adoption of this section shall be regarded as superseding all provisions in the constitution for the election of such judges.

This amendment was not called up.

ARTICLE V, SECTION 27-C (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 27-C of article V.

The secretary read the proposed new section submitted in writing by Hon. James Gay Gordon, Commissioner, as follows:

Section 27-C (New).

Humanity, sound public economy and just consideration for the innocent dependents of persons deprived of their liberty, by judgment, decree or sentence of any court, require that all such persons should, during their imprisonment, be afforded as far as practicable, an opportunity for remunerative labor. The general assembly is accordingly directed to pass laws as may be necessary to give effect to this provision.

Mr. FISHER. Mr. Chairman: Judge Gordon was obliged to leave this evening, but before leaving he committed to Mrs. Miller and myself the sacred trust of calling up this provision. Judge Gordon is very much interested in it, and I am sorry that I am not gifted enough to advocate it as he would if present. However, I shall make the motion to adopt the amendment.

Mrs. MILLER. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. CARSON. Mr. Chairman: Does it belong to the judiciary article? Ought it to be in the judiciary article?

Mr. REED. The judge has sent it there.

Mr. FISHER. That is for Judge Gordon. I would not presume to question his wisdom in such matters.

Mr. Chairman, I think that the point made by General Carson is well taken. This would seem to be a matter of legislation rather that a matter relating to the judiciary, but that could be determined

by the committee on style which expects to do everything that we do not do. If it be adopted it ought to be put in its proper place.

Mr. CARSON. Mr. Chairman: I am in favor of the proposition, but I do not think it should to be tacked on the last section of the judiciary article.

The CHAIRMAN. Senator Fisher's suggestion will be taken care of by the committee on style; that seems to the chair to be a matter of style.

On the question recurring,

Will the committee agree to the motion?

It was agreed to.

The CHAIRMAN. That completes the judiciary article with the exception of the amendments to section 21, which are to be reported to-morrow.

ARTICLE X POSTPONED.

The CHAIRMAN. Is it the desire of the commission that the article on education shall be taken up at this time, or that it shall go over until to-morrow?

Mr. FISHER. Mr. Chairman: I move that this article go over until to-morrow.

Mr. PEPPER. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLES XVI and XVII POSTPONED.

The CHAIRMAN. The next article to be taken up on the calendar is article XVI. Is there any objection to allowing article XVI to go over until to-morrow? Mr. Pinchot has left a memorandum with the chair asking that the consideration of this might be deferred until he returns in the morning. He also has asked that two sections of article XVII might go over until morning, and unless there is objections that also may be done.

Mr. REED. Mr. Chairman: The whole article?

The CHAIRMAN. The whole of article XVI and the whole of article XVII and the whole of article X. These three articles, X, XVI, and XVII, will go over until to-morrow.

ARTICLE XVIII, SECTION 1.

The committee of the whole proceeded to the consideration of section 1 of article XVIII and suggested amendments.

The secretary read the section and amendment suggested in writing by Hon. Alexander Simpson, Jr., of Philadelphia, as follows:

Section 1. How Constitution May Be Amended.

1 Any amendment or amendments to this constitution may be proposed in the
2 senate or house of representatives; and, if the same shall be agreed to by a
3 majority of the members elected to each house, such proposed amendment or
4 amendments shall be entered on their journals with the yeas and nays taken
5 thereon, and the secretary of the commonwealth shall cause the same to be pub-
6 lished three months before the next general election, in at least two newspapers
7 in every county in which such newspapers shall be published; and if the general
8 assembly next afterwards chosen, such proposed amendment or amendments shall
9 be agreed to by a majority of the members elected to each house, the secretary
10 of the commonwealth shall cause the same again to be published in the manner
11 aforesaid; and such proposed amendment or amendments shall be submitted to

12 the qualified electors of the state in such manner, and at such time at least three
13 months after being so agreed to by the two houses, as the general assembly shall
14 prescribe; and, if such amendment or amendments shall be approved by a ma-
15 jority of those voting thereon, such amendment or amendments shall become a
16 part of the constitution; but no amendment or amendments shall be submitted
17 oftener than once in five years. When two or more amendments shall be sub-
18 mitted they shall be voted upon separately.

Section 1-A (New).

The general assembly shall provide at least once in every thirty years for the submission to the electorate of the commonwealth the question whether there shall or shall not be a constitutional convention.

Mr. ENGLISH. Mr. Chairman: For my information would not the adoption of Judge Simpson's suggestion, or one like it, provide some rule, which the Constitution ought to have and which is not there at the present time, which would do away with the uncertainty as to how a constitutional convention may be assembled?

The CHAIRMAN. I suppose it would. This is a mandatory provision that there shall be a constitutional convention called; at least that it shall be submitted once in every thirty years whether a convention shall be called.

Mr. ENGLISH. Mr. Chairman: Perhaps the same purpose can be served in another way without the mandatory provision.

The CHAIRMAN. The chair hears no motion to call this up, and the amendment will be dropped.

The secretary read the amendment submitted in writing by the chairman as follows:

Amend by adding, on line 7, after the word "general," the words, *or municipal.* Substitute for the present article the following:

Mr. REED. Mr. Chairman: I move that the amendment be adopted.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

The secretary read the amendment submitted by Franklin Spencer Edmonds, Esq., of Philadelphia, Pa., on behalf of the Peoples Association of Pennsylvania at public hearings April 20, 1920, as follows:

Section 1. Any amendment or amendments may be proposed in either house of the legislature, at any session thereof, and if the same shall be agreed to by a majority of the members elected to each house, the legislature shall submit the same to the qualified electors of the state at the next general or municipal election; and if such amendment or amendments shall be approved by a majority of those voting thereon, such amendment or amendments shall become a part of the constitution, and shall be so proclaimed by the governor.

Section 2. Whenever the qualified voters of the state, equal in number to at least seven per cent. of the votes cast for governor at the last election for governor shall, by petition to the legislature, request that the question of a constitutional convention be submitted to the people for action, the legislature shall submit the question for the necessary action to the electorate; and if a majority voting thereon shall vote for a convention, the legislature at its next regular session shall make provision therefor and for the prompt assembly thereof. Recommendations proposed by such a convention shall be submitted to the qualified electors of the commonwealth at a special election to be determined by the legislature and shall be voted on separately; and such as shall be approved by a majority of those voting thereon shall become a part of the constitution, and shall be so proclaimed by the governor; except that when a new constitution is submitted to the electors the electors shall vote on said new constitution in its entirety.

Section 3. Whenever qualified voters of the state, equal in number at least to five per centum of the votes cast for governor at the last election for governor shall, by petition to the legislature, propose an amendment or amendments to the constitution, the legislature shall submit the amendment or amendments so proposed to the qualified voters of the state at the next general or municipal election; and if such amendment or amendments shall be approved by a majority of those voting thereon, such amendment or amendments shall become a part of the constitution, and shall be so proclaimed by the governor.

Mr. THORPE. Mr. Chairman: I move the adoption of the amendment.

Mr. PEPPER. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. PEPPER. Mr. Chairman: I understand that the difference in substance between the present article XVIII of the constitution and the proposition of Mr. Edmonds is this; that article XVIII prescribes the way in which specific amendments to the constitution may be made and requires that the proposed amendment shall pass two successive legislatures. Mr. Edmonds in his proposition provides that an amendment which passed a single legislature may, under certain conditions, become operative, and then goes on to make the further important provision as to what shall happen when an entire new constitution is proposed for submission. It is in that particular that it seems to me Mr. Edmonds' suggestion has the advantage of the provision in the present constitution. We are laboring under the disadvantage of having no chart to steer by. With reference to the substitution of an entirely new constitution for the one in force at any time we are left to conjecture as to how we shall proceed if we are not going to proceed by specific amendment to particular provisions. It seems to me there is much more in the proposal which takes account possibly that the business of amending may go the whole length of the substitution of an entirely new constitution, and it will be observed that on page 84, towards the end of section 2, that contingency is covered by this language: "except that when a new constitution is submitted to the electors the electors shall vote on said new constitution in its entirety."

Mr. REED. Mr. Chairman: It has more than that in it. It provides that whenever seven per cent. of the qualified voters petition the legislature then the legislature shall call a constitutional convention. It also provides that whenever five per cent. propose an amendment the legislature shall submit an amendment at the next general or municipal election. Of course, that is a very radical change. At the same time I presume in fairness there ought to be some way by which the legislature could be moved to submit amendments, and not as it is now, entirely in the hands of the legislature; but there ought to be a little more ceremony and a little more safegnard, otherwise you would have the people voting every fall on amendments of all shapes, kinds and sizes. The legislature ought to have some discretion when these amendments are proposed before they submit them, and I think seven per cent. is rather a small number to put the machinery of a constitutional convention with all its expense and the submitting of an entirely new constitution to the people. I think five per cent. is too small to put the people to the trouble of voting and considering amendments of which we will have no doubt a constant flood.

Mr. CARSON. About what percentage would you have in mind as being safe.

Mr. REED. I do not think it ought to be less than ten per cent.

Mr. CARSON. That strikes me as being small. How does it strike you Senator?

Mr. FISHER. Mr. Chairman: I cannot say that the method appeals to me at all as embodied in sections 2 and 3 of this provision.

Of course, it is a form of the initiative. There has never been any difficulty in our state of getting action upon a proposed amendment through the legislature if it has merit. It seems to me if we adopt this amendment we will open the door to continual agitation for amendment or for constitutional conventions. You know how prone people are if they have grievances of some kind to fly to the constitution-making power. They want something in the fundamental law that will fit their particular case. On the other hand, some good meaning people inclined to be a bit visionary may get hold of some idea that they want to embody it in the fundamental law. Of course, that is not in harmony with our idea of permanence in the constitution. The framers of all our constitutions, and particularly is it true of the constitution of 1873, sought to give the terms of the constitution permanence and stability, and this tends in the other direction. That appears in the first section. Now, a proposed amendment must receive affirmative judgment and approval of at least two legislatures. Mr. Edmunds removes the restraint and requires the approval of only one legislature. Well now, maybe some people think that is a matter to be desired. In the states where they have facilities for making rapid changes in the constitution, we observe that the constitution is no longer a constitution, but a code. If we want to adhere to the idea of having a simple fundamental constitution we ought to adhere to the old doctrine of making it difficult to make changes. If we want to adopt the method in vogue in some of the western states, of course, I think Mr. Edmonds' proposition is all right. I doubt if the public mind of Pennsylvania is ready to accept such a radical change in the methods of changing the fundamental law, and I am frank to say that it does not appeal to me. I believe that we have had very good results with the present provision. There have been a number of amendments made where they have had enough merit to commend themselves to two legislatures and they came before the people to receive their judgment. Now, in that way we secure well-considered and meritorious propositions and we do not want to depart from that policy.

Mr. REED. Mr. Chairman: I approached this conclusion by gradual stages, I wanted to stir something up, and I have succeeded. I agree with Senator Fisher exactly, and I intend to vote against this provision because it completely reverses the situation in this state, and instead of, as he says, a stable constitution to which we have given our best thought, we would have a convention or legislature or somebody doing it, you are going to have a constitution with no more stability than an act of assembly.

Mr. THORPE. Mr. Chairman: Just a word. We ought to consider one more matter. Is it not true, Mr. Chairman, that a convention or a commission or legislature could submit anything, but the people have to approve? It is only a committee of the whole after all. Now the question is how to get the committee of the whole, and in making the motion I think probably Mr. Pepper had the same idea. We may have doubts as to the percentage required. It seemingly is very much too small. It ought to be fifteen or twenty per cent. But should it not be made possible for the soverign body at its will reasonably to express its call for a change in the fundamental law? Should it be dependent on the legislature to shut off or turn on the current? That is the real question. I raise this, Mr. Chairman, to get it in the minds of our colleagues.

Mr. PEPPER. Mr. Chairman: It is not quite the same proposition as the initiative with respect to legislation. It must not be forgotten that law under our constitution is nominally enacted by the legislature, and if the application of the initiative is advocated and adopted then a law may be enacted directly by the people or by the legislature at the instance of the people. But a constitution can be made operative and effective only by the will of the people under our present system. The action of the people in case of a constitution is necessarily direct action. The question here is whether those who have under our system the power, and the exclusive power under any circumstances, of making the constitution operative may, under some circumstances have the privilege or right of setting in motion the processes of which they are to be the final arbiters and determiners. It is entirely within the domain of possibility to make the percentage of the population which is to take this action such as would in fact insure safety and stability, and at the same time to leave with the people, who are the only constitution-makers, the right and power of setting in motion the process of constitution-making.

Mr. CARSON. Mr. Chairman: Fifteen or twenty-five per cent. strikes me as entirely too small. I should make it as high as twenty-five or thirty. I share Senator Fisher's apprehension that the constitution becomes no constitution at all excepting in name. It is just a convenient sort of shelter under which temporarily to take refuge from storm to pull down your old shack and put up a new one every time somebody gets a notion that the old one ought to be changed in some way. I respect the law even though it is deteriorated by constant changes, or these opportunities for effecting changes. The constitution is certainly a solemn thing. The way the statesmen in former times went about it made it a dignified and solemn instrument, and they then debated over it, and when it came out it was reported for ratification to other popular assemblies. I would be perfectly willing if it were raised to about thirty per cent. of the electors to consider it. A smaller number than this would put it in a constant state of agitation. There is no stability, there is no idea what the law is to be used for. Judges after awhile will hesitate to exercise their power of interpretation, they will say, "What we do now, to-morrow morning may be repealed. What is the use of our taking so much time and care about this? What does your history amount to? All may be wiped out over a night." I recall talking to one of the members of the state board of law examiners in the state of Missouri. He told me a young man came up before them for examination, who happened to be a clerk in a lawyer's office. His familiarity with statute law was complete according to his own statement, but he had never undertaken to look into a text book or knew anything about fundamental principles, or anything of that sort. He thought that was a waste of time. The examiner said, "I am afraid to examine you because you have not read an ordinary textbook or examined the cases. What is it you really do know?" The young man replied, "You have not tried me on the statutes." The examiner said, "I do not want to examine you and then have the legislature repeal to-morrow morning all that you do know."

Mr. THORPE. Mr. Chairman: Before going any further would I be permitted to say that I think if we combine Senator Fisher's

suggestion and a number of Mr. Edmonds' that it would perhaps satisfy conservation and love of reform. It seems to me if we could have two legislatures pass on the question as at present or the alternative of a respectable percentage of the public calling for it, that we would secure a fair degree of stability, say a percentage of twenty or twenty-five per cent. as an alternative in case the legislature was persistent, some such proposition as that would be safer.

Mr. REED. Mr. Chairman: Can anybody tell me what the number of voters in Pennsylvania is?

The CHAIRMAN. After the women get the right to vote it is supposed that there will be about four million of voters.

Mr. REED. Mr. Chairman: Without the ladies?

The CHAIRMAN. Without the ladies, about one million seven hundred and fifty thousand.

Mr. STACKPOLE. Mr. Chairman: Close to one million five hundred thousand.

Mr. REED. Mr. Chairman: One of the vices of this popular proposition is that the people will not vote on these amendments. You might have an amendment submitted to the legislature and the legislature required to submit it to the people, but here is the style of the vote you would get. Here is an amendment in 1911, one hundred and forty thousand voted for it and eighty-eight thousand against it: another amendment was submitted, and one hundred and twenty thousand voted for it and eighty-five thousand against it; in 1914 there seems to have been more excitement about something or other, and two hundred and fifty-nine thousand voted one way and three hundred thousand the other way; one amendment, two hundred and three thousand for and two hundred and nineteen thousand against; another amendment, two hundred and seventeen thousand for and one hundred and ninety-five thousand against. You do not get a characteristic representation, and the result of this amendment is that without any discretion on the part of the legislature when a small percentage, or some percentage, calls for a change you will have to submit it to a vote, and nobody votes. The proposition as stated here is if the majority of the electors voting are in favor of the amendment it becomes a part of the constitution.

Mr. KELLY. Mr. Chairman: I think the first section of Mr. Edmonds' proposition and the third section are bad. In other words, I think it makes it too easy to amend the constitution. The first section practically changes it from having the proposed amendment pass through two legislatures and limits it to one, and the third section provides that without any action whatever on the part of the legislature the amendment may be adopted merely upon the initiative or address of five per cent. of the voters, and I agree with Senator Fisher that it is a good thing not to make it too easy to change the constitution; but it seems to me that there is considerable merit in the second section of this proposition of Mr. Edmonds. It provides a method by which the people can procure a constitutional convention. If the percentage perhaps was raised to some proper percentage, it seems to me that it would be a good proposition, because you will observe that the convention is not called upon the address of this percentage, but simply shall be submitted to the people, to all the voters, as to whether or not they want a constitutional convention, so that that a deliberate step will first have to be taken before you

have a constitutional convention, and in many instances if there were no general demand for a constitutional convention, even though the question were submitted, it would be voted down on the ground of needless and unnecessary expense and agitation and all that sort of thing, whereas if there were a substantial demand for a constitutional convention, then perhaps the people would vote in favor of calling one or holding one, whereupon nothing would yet be done until that convention had convened, and still nothing would be accomplished and no change made in the constitution until after the recommendations of the constitutional convention so held had been submitted to the people and adopted. Amendments in this sense that might be called amendments should be voted upon separately, or a new constitution to be submitted in its entirety. I think we have no provision at all in the present constitution as to how we shall have any other constitutional convention, and it seems to me if this percentage called for in the second section were raised to a more substantial percentage that there is some merit in the second section. In order to bring this matter before the commission, if I am in order, I would move to amend by striking out sections one and three and by striking out in the second line of section two the word "seven" after the word "least" and inserting instead the word "twenty-five" or "twenty."

Mr. FISHER. Mr. Chairman: I second the amendment.

On the question,

Will the Committee agree to the amendment?

Mr. THORPE. Mr. Chairman: I am happy to accept that new proposition.

On the question recurring,

Will the Committee agree to the motion?

Mr. KELLY. Mr. Chairman: I will agree to twenty-five.

The CHAIRMAN. That is one-fourth of the entire electorate to initiate. It does seem twenty per cent. will be sufficient.

Mr. REED. Mr. Chairman: Twenty per cent. would be quite enough.

Mr. FOX. Mr. Chairman: I want to inquire whether this is to be a substitute for section 1 as originally adopted.

The CHAIRMAN. No, sir. Section 1, as I understand it, is to remain, this will simply give an alternative, either to amend or to call a constitutional convention.

Mr. REED. Mr. Chairman: This will be section 2?

The CHAIRMAN. Yes, sir.

Mr. FOX. Mr. Chairman: I think then it ought to be safeguarded in some such way as this, that this shall not be the exclusive method of calling a constitutional convention otherwise it could be interpreted to mean that the legislature would not have the power.

Mr. THORPE. Mr. Chairman: Is there not a precedent here in the federal constitution? If we follow its general language, it says that there are two ways of amending. Could we not get out of the difficulty either by way of this alternative or by adding the words, "either as called by the legislature or whenever called by the qualified electors?"

Mr. KELLY. Mr. Chairman: I will accept that as an amendment to my motion.

On the question recurring,

Will the committee agree to the motion?

It was agreed to.

The secretary read the amendment submitted in writing by George D. Taylor, Esq., of Scranton, Pa., as follows:

Substitute for the present article the following:

Section 1. A constitutional convention shall be held at the city of Harrisburg on the first day of March in the year of one thousand nine hundred and twenty-four, and on the first Monday in March in every sixth year thereafter, for the purpose of recommending changes in, and amendments and additions to the constitution of Pennsylvania.

Section 2. The convention shall be constituted of delegates, one delegate from each senatorial district of the commonwealth of Pennsylvania to be elected at the last general election preceding the time of the meeting of the convention.

Section 3. The governor shall proclaim and direct the election of the delegates to the convention by written or printed and written communications directed to the county commissioners of every county at least six months in advance of the election, and if he fail to make and direct such proclamation he shall be compelled to act by mandamus from the supreme court amply in time to secure the election of the delegates.

Section 4. At every such election every elector shall be entitled to vote for two delegates, and the person receiving the highest number of votes shall be certified by the county commissioners as hereinafter provided as the principal delegate elected, and the person receiving the second highest number of votes shall be certified as an alternate delegate.

Section 5. No person shall be entitled to have his name printed on the official ballots as a candidate for delegate to the constitutional convention unless he shall present to the county commissioners of the county of his residence thirty days before the last day for the printing of the official ballots a petition signed by such a number of the qualified electors of his senatorial district as shall be equal in number to ten per cent. of the highest vote cast in the county of his residence for any candidate at the last preceding election at which a county officer was elected, praying the printing of his name on the official ballot, but without political party designation, and unless the candidate also file with the county commissioners an affidavit sworn to by him declaring his qualifications for delegate to the constitutional convention according to the requirements of this article; but all votes specially written into the official ballots for delegates to such convention shall be counted and computed even though cast for a candidate or candidates for delegate whose names are printed on no official ballot, and if any such candidate receive a majority of all votes cast or the second highest number of all votes cast his election shall be certified, and he shall be entitled to membership in the convention if he be qualified as required by this article; and the convention shall have power by a majority to refuse to seat any person as a delegate in the convention on satisfactory proof that he is not qualified for membership.

Section 6. Each principal delegate shall attend the convention, and on production of his certificate of election shall be entitled to participate in all its deliberations, but if for any reason whatever he fail to present himself at the organization of the convention, or if he be declared by the convention disqualified for membership, the duly certified alternate from his district on the production of his certificate of election shall be entitled to sit in the convention and participate in all its deliberations.

Section 7. In districts composed of more than one county the final certificate of election shall be issued by the commissioners of the county of the district which had the greatest population at the last preceding federal decennial census, and the commissioners of the other counties of such district shall make a certificate showing the highest vote and the second highest vote for delegates in their respective counties and forward such certificates to the county commissioners of the county having the greatest population of the district; and the commissioners of the county after computing the certificates of election from all the counties of the district shall certify the highest vote and the second highest vote for delegate of the entire district based on the returns of all the counties in the district.

Section 8. All disputes and contests about elections of delegates shall be settled by the court of common pleas of the county composing the senatorial district or by the court of common pleas of the county having the greatest population in the senatorial district at the last preceding federal census whenever the district is composed of two or more counties, and the commissioners of the counties shall issue two certificates of election, one to the principal and the other to the alternate delegate, elected by the returns where there is no dispute or contest, and where there are disputes and contests then the commissioners shall issue certificates according to the final judgment of the courts of common pleas aforesaid.

Section 9. No person shall be entitled to sit in the convention unless he be a qualified elector of his senatorial district, and unless he be thirty-five years of age, and no person shall be entitled to a certificate of election if within five years preceding the first day of the convention he has held any public office, state, county, municipal, judicial or legislative, whether the same is elective or appointive, or if he has been a clerk or deputy in any such public office, within five years preceding the first day of the convention.

Section 10. Every delegate shall be paid for his actual traveling expenses in attending such conventions from his residence to Harrisburg and in return, and for adjourned meetings of the convention not exceeding five adjournments, at the same rate at which members of the general assembly are paid for traveling expenses, and each delegate shall be paid for his service at the rate of ten dollars per day of actual attendance, by warrants drawn on the state treasurer and certified by the president and secretary of the convention.

Section 11. The deliberations of the convention may continue during thirty days from the first Monday in March as aforesaid, and until the last Saturday preceding the first Monday of the following April, but no longer.

Section 12. All the recommendations made by the convention for changes, amendments and additions as aforesaid shall be printed in pamphlet form, over the signatures of the president and secretary of the convention, by the secretary of the commonwealth, at the expense of the state treasury, in such quantities and in such numbers of editions as shall be recommended by the convention, and the county commissioners of each county shall be supplied by the secretary of the commonwealth with such reasonable quantities of the printed recommendations as shall be required by the commissioners for distribution amongst the people of their counties, all promptly within sixty days after the final adjournment of the convention; and at the next general election the qualified electors of the commonwealth shall vote to adopt or reject the recommendations of the convention, on each recommendation separately; and all recommendations adopted by a majority of all votes cast in the commonwealth, as shall appear by the returns certified by the county commissioners of the commonwealth to the secretary of the commonwealth, shall thereafter be a part of the constitution of the commonwealth.

Section 13. All necessary expenses of the convention and all compensation to necessary clerks and stenographers shall be paid out of the state treasury, on warrants drawn by the president and secretary of the convention, both of whom shall be elected by the convention on written ballots immediately after the convention is ready for permanent organization.

Mr. CARSON. Mr. Chairman: There is only one defect in that, and that is that the gentleman has not submitted a draft of the constitution to be voted on every six years so as to save us the trouble.

The CHAIRMAN. The chair hears no motion to adopt this amendment, and it will therefore be dropped.

COMMITTEE OF WHOLE RISES.

The committee of the whole then rose and the chairman reported progress.

ADJOURNMENT.

Mrs. MILLER. Mr. Chairman: I move that the commission do now adjourn until 10 o'clock to-morrow morning.

Mr. REED. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 10 o'clock P. M. the commission adjourned until 10 o'clock to-morrow morning.

Senate Chamber,

Thursday, May 13, 1920.

The Commission met at 10 o'clock A. M.

The Chairman, William I. Schaffer, in the chair.

The CHAIRMAN. The hour fixed for the meeting of the commission having arrived, the commission will be in order.

ROLL CALL.

The CHAIRMAN. The secretary will now call the roll.

The roll was called by the secretary and was as follows:

PRESENT—16.

Carson, English, Fisher, Fox, Kelly, McCormick, Miller, Munce, Pepper, Pinchot, Reed, Stackpole, Stevens, Thorpe, Tyson, Schaffer (Chairman).

ABSENT—9.

Alter, Connelly, Cuyler, Gordon, Perrine, Smith, Sulzberger, Voll, Warburton.

The CHAIRMAN. A quorum of the commission being present, the commission will proceed with its business.

JOURNAL APPROVED.

Mrs. MILLER. Mr. Chairman: I move that the reading of the journal be dispensed with and the journal approved.

Mr. FOX. Mr. Chairman: I second the motion.

The motion was agreed to.

The CHAIRMAN. Has any member of the commission anything to bring before the commission at this time?

COMMITTEE ON STYLE.

Mr. THORPE. Mr. Chairman: I desire to offer the following resolution.

The secretary read the resolution as follows:

Resolved, That the chair appoint a committee of seven including himself as chairman, to be known as the committee on style. The chairman and secretary of the commission will be the chairman and secretary of the committee, respectively.

The committee shall cause to be published and distributed a second draft of the constitution incorporating therein all amendments to the preliminary draft adopted by the commission.

The committee shall prepare and submit to this commission a report which shall contain:

(a) The second draft incorporating therein such suggestions for the improvement of the language and the arrangement of the sections of the constitution, not affecting the substance of the provisions, as the committee may deem advisable.

(b) Separately such recommendation for the amendment of an addition to the second draft which the committee itself may deem advisable.

(c) The matters and things which in the opinion of the committee this commission should embody in its report to the general assembly, set forth in such form and detail as the committee may regard serviceable for consideration and discussion by this commission.

(d) Any other matters and things which the committee may deem it advisable to call to the attention of the commission.

Mr. THORPE. Mr. Chairman: I move the adoption of the resolution.

Mr. KELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

The CHAIRMAN. The chairman appoints as such committee Mr. Thorpe, Judge Reed, Senator Fisher, Mr. Carson, Mr. Pepper and Mr. English, and the chair himself is named in the resolution.

REPORT FROM COMMITTEE.

The CHAIRMAN. Are there any reports from committees?

Mr. PEPPER. Mr. Chairman: With your permission I shall present the section which was unanimously agreed to by the members of the special committee of five appointed last evening by the chair.

The report was read by the secretary as follows:

Section 21. No duties shall be imposed upon any court or upon any judge thereof except such as relate to the administration of justice, to the conduct of the business of said court, or to the conduct of elections. From and after the adjournment of the session of the general assembly next ensuing after the adoption of this constitution no powers of appointment shall be exercised by any court or judge except such as are incidental to said duties or such as concern the inspection and management of prisons, the condemnation of private property, the administration of public trusts, of public parks and of public works, and the visitation of public institutions. The general assembly shall enact such legislation as is necessary to vest all other appointing powers now exercised by courts or judges in such non-judicial agencies as it shall deem proper.

The CHAIRMAN. The report will be received and considered by the committee of the whole.

COMMITTEE OF THE WHOLE.

The commission then resolved itself into the committee of the whole, William I. Schaffer, Chairman.

ARTICLE V, SECTION 21.

The CHAIRMAN. The first subject to come before the committee of the whole for consideration is the report of the special committee on section 21 of Article V.

The secretary read the report as follows:

Section 21. No duties shall be imposed upon any court or upon any judge thereof except such as relate to the administration of justice, to the conduct of the business of said court, or to the conduct of elections. From and after the adjournment of the sessions of the general assembly next ensuing after the adoption of this constitution no powers of appointment shall be exercised by any court or judge except such as are incidental to said duties or such as concern the inspection and management of prisons, the condemnation of private property, the administration of public trusts, of public parks and of public works, and the visitation of public institutions. The general assembly shall enact such legislation as is necessary to vest all other appointing powers now exercised by courts or judges in such non-judicial agencies as it shall deem proper.

Mr. PEPPER. Mr. Chairman: I move, sir, the adoption of that section.

Mr. ENGLISH. Mr. Chairman: I second the motion.

The motion was agreed to.

The CHAIRMAN. That cleans up action on the article on the judiciary, article V.

ARTICLE X POSTPONED.

Mr. THORPE. Mr. Chairman: Permit me to make an inquiry. I do not want to complicate the situation, but there are several members of the commission deeply interested in this educational proposition who are not here, and I was wondering whether we might not take up another article first and defer this until later in the day, if it is agreeable to the commission. I did not get in at the opening of this session, and I make it as a motion, sir, that we take up the article on education a little later in the day.

The CHAIRMAN. The chair hears no objection and that will be done.

ARTICLE XVIII, SECTION 1.

Mr. THORPE. Mr. Chairman: There is one other matter, if you please. Last evening the committee passed the clause or section pertaining to amendments to the new constitution. It was passed subject to the thought of the moment, and it seems to me, sir, that there are some defects in that matter which might cause regret later on. Of course, there are two aspects to that proposition, that the legislature may submit an amendment or that the people may petition for the same or a new constitution. The proposition is somewhat novel that the people may petition by a percentage. There was a disposition here to make the percentage rather high, even from twenty-five to one hundred per cent. It occured to me, sir, that there may be a feeling among the people that they should be free and that the act as to improvement should be easy to reach, and that percentage is too high, and I have been looking through some typical constitutions as to the method of amendments and new constitutions, and so on, and I did not find a single instance where there is any provision for a percentage of popular petition. There are a good many precedents for the legislature to act by majority or by three-fifths vote to submit, directly after one legislative assembly, or to submit after a second, a good many instances of that kind, but none on a percentage of popular petition. If we are going to make a percentage for popular petition, should we make it so high as to make it a joke, that the people might say, they recognize the popular right, and so on, and have made it impossible of attainment, like the laws of Rome, which were set up so high on a pole that they could not be read? I simply call that to the attention of the commission. We must not antogonize the vote that is coming on. There are people who have not quite the conservative feeling that we have, and so on, but whose opinions must be respected. I therefore, Mr. Chairman, move a reconsideration of section 1 of article XVIII.

Mr. PEPPER. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question recurring,

Will the Committee agree to the section?

Mr. THORPE. Mr. Chairman: I will move that the percentage be made ten per cent. in order to bring it to the attention of the Commission.

Mr. PEPPER. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. ENGLISH. Mr. Chairman: It seems to me that the situation would be adequately met by a section in the constitution which would make it possible to have a constitutional convention called whenever a joint resolution might be adopted, say, by a three-fifths vote at two separate sessions of the general assembly. I think it is unnecessary at all to have in the constitution anything quite as cumbersome as it seems to me that section is.

When the people want a constitutional convention there is not any doubt in my mind but that popular sentiment will manifest itself through the general assembly, and if the sentiment is strong enough it

will manifest itself by a three-fifths vote, and certainly in two succeeding sessions, and if it does not endure this then it is not strong enough to justify the expense of a constitutional convention. That is the way the situation strikes me. I do not believe it is necessary at all to have this initative provision for the calling of constitutional conventions, but I believe that the machinery is already provided in the general assembly for the expression of popular sentiment on all these questions, and if it is expressed long enough and persistently enough through two sessions of the legislature that will accomplish the purpose that we have in mind. I should think everybody favors some kind of a section in the constitution which will provide the machinery for calling a constitutional convention, and I think in that respect the existing constitution is defective.

Mr. REED. Mr. Chairman: It seemed to me, Mr. Chairman, last night that there ought to be some power after this petition is presented, some discretion on the part of the legislature as to whether or not it will call the convention. Now, if there is a demand from ten per cent. of the voters for the calling of a convention I have no doubt the legislature will respect it, but we take away entirely in this amendment absolute discretion on the part of the legislature either as to the necessity of a convention or the form of it, simply provide that whenever ten per cent. call for the convention the legislature can do it in that mandatory way. That was the thonght running through my mind, but it was pretty late and I guess my mind was not running exactly as it should have been.

Mr. PEPPER. Mr. Chairman: I was very much impressed with what has been said by Mr. English. It is true, I take it, that if yon have a percentage of a great body of voters even as small as ten per cent., that that represents a current of public opinion which would of itself be effective if directed at the legislature; that is, if there are numerically in this state enough people to constitute ten per cent. of the voters who are sufficiently interested in a constitutional convention to be willing to agitate for it and sign a petition, it is a body of opinion which the legislature would not very likely ignore, if the attention was focused upon them, even in the absence of constitutional provision. I think that what Mr. English says is very weighty upon this subject, and I am inclined, in view of the difficulties that have developed, to move as a substitute for the pending resolution that we strike out section 2, which is the subject-matter of our discussion. If that motion should prevail the situation would be restored as it exists under the present constitution and the way would be open for making any amendment in detail that may be necessary in connection with that article. I move you, sir, for the reason that I have stated, that we strike out the second section, which was embodied in the Edmonds proposition and was adopted last night.

Mr. FISHER. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. REED. Mr. Chairman: May I ask Mr. Pepper to tell us where we are going? We are on our way, but where are we going? What is in his mind as a substitute so that we can vote intelligently on it?

Mr. PEPPER. Mr. Chairman: Only this, sir. I can see no real criticism of the eighteenth article as it stands, excepting that it fails to provide for the contingency in which you may desire to submit an

entirely new constitution or a long series of specific amendments. The only idea I had was that the eighteenth article ought to be amended in such a way as to provide for the contingency of an entirely new constitution and provide for the machinery of dealing with it. Thus when you come to try to work out a system for setting in motion the conventional machinery, then you get into difficulty, because it seems to me that if you are going to have popular initiative at all and have agreed on any given percentage, it is inconsistent with the idea to give the legislature discretion as to whether or not they will act on the petition of a requisite number. On the other hand, if you do not give the legislature discretion, you are confronted with the difficulty to which Judge Reed has called attention. If you make the percentage small enough to be really workable as a petitioning percentage, you bring it down so low that it becomes possible to put the machinery in motion on inadequate occasions and for insufficient cause. If you raise your percentage high enough to give stability to the constitution, you meet Dr. Thorpe's objection that the people will say, and rightly, that the percentage sounds all right, but when you apply it to the facts you are making an impossible requirement respecting the signers of that petition. So that I for one have come to the conclusion that the practical difficulties in the way of meeting this condition before us are insuperable, and that we will do better to stand upon the constitution as it exists with such amendments as may be necessary to cover any real contingency of specific propositions but the substitution of an entire constitution; so I press the motion to strike out the section of the Edmonds proposal, which will have the effect, if it prevails, of restoring the constitution as it stands.

On the question recurring,

Will the commitee agree to the motion?

It was agreed to.

On the question,

Will the committee agree to the section?

Mr. THORPE. Mr. Chairman: Will you permit me to call attention to what seems to be the fairest procedure in getting a new constitution in the union. The ordinary procedure in the state of how to get a new convention Mr. Pepper has spoken of, how to get amendments, but we have no provision in our constitution how to get a new constitution.

The CHAIRMAN. Do you offer this as an amendment?

Mr. THORPE. Mr. Chairman: I wish to bring this as an amendment to this proposition. This is one of the very recent constitutions. It happens to be South Carolina. It is quite characteristic. Whenever two-thirds of the members elected to each branch think it necesssary to call a convention to revise or amend they shall recommend to the electors to vote on it, and if a majority votes the convention shall be called. I move that a provision to that intent shall be inserted in the pending section.

Mr. FISHER. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. FISHER. Mr. Chairman: I support that because it is more conservative than the method under our existing constitution. At the present time the legislature can submit the question of a new consti-

tution to a popular vote at any time by a mere majority, and to that extent this is more conservative than our present state constitution.

On the question recurring,

Will the committee agree to the motion?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVI, SECTION 1.

The committee of the whole proceeded to the consideration of section 1, of article XVI, and suggested amendments.

The secretary read the section and amendment submitted in writing by George W. Woodruff, Esq., on behalf of the Pennsylvania State Grange, as follows:

Section 1. Certain Unused Charters Void.

1 All existing charters, or grants of special or exclusive privileges under which
2 a bona fide organization shall not have taken place and business been com-
3 menced in good faith, at the time of the adoption of this constitution, shall there-
4 after have no validity.

Strike out, and substitute therefor the following:

All articles of incorporation, franchise and grants by the state of special or exclusive privileges, the holders of which shall not, within one year after the date of adoption of this constitution, file with the secretary of state a true declaration that organization has been effected and business or construction has in good faith been begun, shall, after said one year from the adoption hereof be null and void, and the secretary of state shall declare and record such annulment.

This amendment was not called up.

The secretary read the amendment submitted in writing by Hon. Alexander Simpson, Jr., of Philadelphia, as follows:

Amend by adding at the end thereof of the words *and the charters of business corporations which for a period of five years failed to make a return of and to pay a state tax shall be deemed forfeited.*

Mr. FOX. Mr. Chairman: I move that the amendment be adopted.

Mr. KELLY. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. PEPPER. Mr. Chairman. I suppose that word "failed" should be "fail."

The CHAIRMAN. Yes, that can be corrected.

Mr. REED. Mr. Chairman. That I suppose is a question of legislation, unless it is important enough to print it in the constitution. That ought to be forfeited if they do not pay their taxes.

Mr. FISHER. Mr. Chairman: It seems to me that this is a legislative subject and is now fully covered by the acts of assembly. I remember recently this subject was before the attorney general of our state, and the laws seemed to be adequate enough to give him full power. I doubt the widsom of inserting that legislative subject in the form of a constitutional provision.

The CHAIRMAN. They can be forfeited in the same way they are now by *quo warranto.*

Mr. PEPPER. Mr. Chairman: That difficulty occured to me. This is a declaration that they shall be forfeited, and it raises the

question, which it seems to me is a serious one, as to whether *quo warranto* is necessary, and if it is not then you may have a condition of great injustice in particular cases.

The CHAIRMAN. It seems to me that there ought to be some notice to the corporation. They might not have paid taxes for some reason or other, but they ought to have notice of some kind.

Mr. PEPPER. Mr. Chairman. May I suggest that this is infelicity of expression. A "Business corporation" is not really a term of art. There is a serious question in particular cases as to whether a corporation is or is not a business corporation. We have some corporations without capital stock which are corporations for profit. I think the section is drawn without full consideration, and I hope it will not prevail.

Mr. FOX. Mr. Chairman: If the seconder will permit, I will withdraw the motion.

Mr. KELLY. Mr. Chairman: I withdraw my second.

The CHAIRMAN. The motion is withdrawn and as the chair hears no motion calling up the proposed amendment, it will be dropped.

ARTICLE XVI, SECTION 3.

The committee of the whole proceeded to the consideration of section 3, of article XVI, and suggested amendment.

The secretary read the section and amendment suggested by James Collins Jones, Esq., of Philadelphia, as follows:

Section 3. State's Right of Eminent Domain.—Police Power.

1 The exercise of the right of eminent domain shall never be abridged or so con-
2 strued as to prevent the general assembly from taking the property and fran-
3 chise of incorporated companies, and subjecting them to public use, the same as
4 the property of individuals; and the exercise of the police power of the state shall
5 never be abridged or so construed as to permit corporations to conduct their
6 business in such manner as to infringe the equal rights of individuals or the
7 general well-being of the state.

Strike out on line 4 the word [individuals] and insert in lieu thereof the word *others*.

Mr. REED. Mr. Chairman: Mr. Jones' idea was that individuals conducting business such as taxicabs and things of that sort ought to be within that provision. It did not appeal to me at the time.

The CHAIRMAN. There being no motion to call up this suggested amendment, it will be dropped.

ARTICLE XVI, SECTION 16.

The committee of the whole proceeded to the consideration of section 16 of article XVI, and suggested amendment.

The secretary read the section and amendment submitted by Hon. Francis Shunk Brown, of Philadelphia, as follows:

Section 4. Corporate Elections.

1 In all elections for directors or managers of a corporation each member or
2 shareholder may cast the whole number of his votes for one candidate, or dis-
3 tribute them upon two or more candidates, as he may prefer.

Amend by inserting on line 2 after the word "shareholder" the words *of stock having a right to vote.*

Mr. ENGLISH. Mr. Chairman: I move that the amendment be adopted.

Mr. FOX. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question.

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVI, SECTION 6.

The committee of the whole proceeded to the consideration of section 6 or article XVI, and suggested amendment.

The secretary read the section and amendment submitted in writing by the chairman, as follows:

Section 6. Corporate Powers.—Real Estate.

1 No corporation shall engage in any business other than that expressly au-
2 thorized in its charter, nor shall it hold any real estate except as may be neces-
3 sary and proper for its legitimate business.

Amend by striking out beginning on line 2 the words [nor shall it hold any real estate except as may be necessary and proper for its legitimate business].

Mr. REED. Mr. Chairman: I move that the amendment be adopted.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question.

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVI, SECTION 7.

The committee of the whole proceeded to the consideration of section 7 of article XVI and suggested amendments.

The secretary read the section and amendment submitted by Frederic L. Clark, Esq., Real Estate Trust Building, Philadelphia, Pa., at public hearings April 13, 1920, also in writing by W. J. Fitzgerald, Esq., of Scranton, Pa., as follows:

Section 7. Stocks and Bonds.—Increase of Indebtedness.

1 Shares of stock having par value shall be issued only for the equivalent of
2 such par value in money, labor done or property actually received; but subject
3 to such provisions respecting public notice as may be made by the general as-
4 sembly, and subject to the power of the general assembly directly or through
5 an administrative agency to regulate issues of stock of public service companies,
6 a corporation may issue additional full-paid shares for a consideration in
7 money, labor or property equal to the current market value of its shares thereto-
8 fore issued. Neither the stock nor indebtedness of corporations shall be increased
9 except in pursuance of general law nor without the consent of persons holding
10 the larger amount in value of the stock first obtained at a meeting to be held
11 after thirty days' notice given in pursuance of law.

Substitute for the last sentence in the section the following:

Neither the stock nor indebtedness of corporations shall be increased except in pursuance of general law nor without the consent of the *persons holding a majority of each class of stock which, by contract with the corporation or under its by-laws or under the general law, is entitled to vote on the proposed increase;* or, omit all of this sentence except the first clause, making the section conclude.

* * * * Neither the stock nor indebtedness of corporations shall be increased except in pursuance of general law.

Mr. REED. Mr. Chairman: I move that the amendment be adopted.

Mr. PEPPER. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. REED. Mr. Chairman: There has grown up in the last few years a method of issuing preferred stock by which the provision is included in the certificate that that stock shall not vote. It is well understood by the people that it is a sort of an income bond never coming due, but under the constitutional provisions as it is now it is necessary for the real stock holders, the common stockholders, in case it becomes important to increase the capital or indebtedness, to obtain the consent of these preferred stockholders, many of whom have not the slightest interest in the method as long as they get their dividends.

The CHAIRMAN. This is in the alternative, the alternative proposition is at the top of page 76.

Mr. REED. It is the one on page 75.

The CHAIRMAN. Which is the better plan? It does seem to me it should be regulated by law and not fixed in the constitution. It really is not a constitutional matter how it shall be voted by them.

Mr. REED. Mr. Chairman: I do not think that second one is wise at all. It does away with the protection that stockholders have against an increase of indebtedness, if I understand which one you are reading. "Neither the stock nor indebtedness of corporations shall be increased except in pursuance of general law."

The CHAIRMAN. Yes; then the law might provide which way it could be done.

Mr. REED. The law might provide which way it shall be done.

The CHAIRMAN. In practical experience every increase of capital stock is done by a waiver.

Mr. REED. That is true, and this does away with the necessity of the stockholders voting at all.

The CHAIRMAN. Then it is your proposition to adopt the first, is it, Judge Reed?

Mr. REED. Mr. Chairman: That would be my proposition.

The CHAIRMAN. Then we will put the vote that way. I have no fixed opinion on it.

On the question recurring,

Will the committee agree to the motion?

It was agreed to.

The CHAIRMAN. The second alternative will therefore be dropped.

The secretary read the amendment submitted in writing by Ralph J. Baker, Esq., of Harrisburg, Pa., as follows:

The second amendment suggested above.

This amendment was not called up.

The secretary read the amendment submitted in writing by Ralph J. Baker, Esq., of Harrisburg, Pa., as follows:

Amend to read as follows:

Neither the stock nor indebtedness of corporations shall be increased except in pursuance of general law nor without the prior consent of the holders of a majority of such outstanding shares as, under the charter of the corporation or any amendments thereto, entitled the holders thereof to vote on such question; such consent to be obtained at a meeting to be held after thirty days' notice given in pursuance of law unless said notice be waived in writing by the holders of all of said shares.

This amendment was not called up.

The secretary read the amendment submitted in writing by Hon. Alexander Simpson, Jr., of Philadelphia, as follows:

Amend by adding at the end thereof the following:

The general assembly may empower corporations to issue stock without nominal or par value.

Mr. PEPPER. Mr. Chairman: The fact that Judge Simpson proposes it shows that there is in his mind at least a doubt on the subject, and if there is a doubt it ought to be removed.

The CHAIRMAN. Surely, there are millions of property being covered now by a "no par" charter, as I happen to know.

Mr. PEPPER. Yes, I filed merger argreements here in Harrisburg within two days.

The CHAIRMAN. I am preparing one that is lying on my desk now which involves a very large amount of property of great value.

Mr. PEPPER. Mr. Chairman: I do not suppose there is any doubt about it. Section 7 as we have drafted it provides that shares of stock having par value shall be issued, and so forth, the imputation being that shares without par value may be issued otherwise; but to remove any possible doubt I am glad to move the resolution proposed by Justice Simpson.

Mr. TYSON. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. FISHER. Mr. Chairman: This is a legal question which I feel incapable of discussing without looking up the authorities. I am strongly of the impression that stock may be issued without a nominal par value at the present time. There seems to be no limit or restriction on it at all. If we put this in it may act in the future as a limitation on the kinds of stock that may be issued. To-day you can issue preferred stock and put that stock into any form you desire simply because there is no limitation. There is no specification as to the kind of stock a corporation may have, and I am afraid this would act as a restriction rather than a grant of power.

Mr. PEPPER. Mr. Chairman: Is not this the situation? A recent session of the legislature enacted in Pennsylvania, following the example of New York, the no par stock law which authorizes the issuing of shares of stock without nominal or par value. And under that law large numbers of corporations are being chartered and mergers and consolidations of existing corporations are being effected, the new company to have stock without nominal or par value. The question now arises whether under the constitution of 1873 the legislation under which we are acting is constitutional legislation. Mr. Justice Simpson has raised the question whether the act under which this great development of corporate activities is taking place is itself a valid act in view of the implication in the state constitution that stock shall have par value. This amendment is intended, as I understand it, to remove beyond all peradventure the question of validity of the existing statute, which is of vital importance.

Mr. FISHER. Mr. Chairman: I grasp the meaning exactly of Mr. Pepper. The point is this, without any limitation or restriction upon the legislature, they can authorize the issuing of this kind of stock. They have exercised that power under the assumption that there is no limit on the power. I assume that there has been no judicial determination as to whether or not such an issue of stock under the act of assembly is legal.

The CHAIRMAN. Suppose that should be held unconstitutional?

Mr. FISHER. Mr. Chairman: Then all such stock issues would fall, but this does not cure existing issues. I am strongly in favor of the issuing of stock without par. I think it is an excellent device, but if we allow this to go it is pretty clear that the question of the legality of these issues is in the mind of somebody, and it will raise the question right away. If we pass this without protecting prior issues, we are going to accentuate that question. Now, if we adopt this it seems to me we ought to cover, if possible, prior issues and eliminate doubt altogether.

The CHAIRMAN. Have you an amendment to suggest, Senator Fisher, that accomplishes it?

Mr. FISHER. Mr. Chairman: I have not. If Mr. Pepper will accept the suggestion, it will be that we adopt this amendment with the understanding that the committee on style will so construct the amendment as to cover existing issues.

Mr. PEPPER. Mr. Chairman: Yes; I am very happy to accept that suggestion, sir. I think it is an important one.

Mr. REED. Mr. Chairman. The main reason for passing this amendment is because Justice Simpson suggests it. If it had come from some ordinary lawyer like myself probably it would have been voted down, as most all my propositions have been. I do not see the necessity of this provision. We all agree that corporations have the power to issue stock having no par value as authorized by the legislature. You are going to cast, as Senator Fisher says, a doubt on all the issues that have been made, and whether our action is taken as having any weight, the fact it is suggested by a judge of the supreme court and approved by this commission will set somebody to work to find out. I do not favor any amendment of the provision. I think I will vote against it.

The CHAIRMAN. The question is on the adoption of the amendment.

Mr. REED. Mr. Chairman: Which one?

Mr. FISHER. It is the only one pending. My suggestion was that the committee on style should have the power to extend the provision of the amendment to cover existing issues.

Mr. REED. Mr. Chairman: That proposition to validate existing issues.

Mr. REED. Mr. Chairman: That proposition to validate existing issues means that the actions of this commission, if it ever does materialize, will be two or three years off, anyhow.

The CHAIRMAN. I understand that that question shall be taken up by the committee on style if this is adopted.

Mr. PEPPER. Mr. Chairman: Judge Reed has made the point, and it seems to me what we are trying to do is to guide posterity, and therefore we want to be sure that our government is in the direction of peace and not disturbance.

The CHAIRMAN. I for one am willing to stand by the opinion I have given that "no par value" stock is valid under the present constitution.

Mr. PEPPER. Mr. Chairman: It is quite true that we never entertained doubts upon the subject, but one member of the tribunal that has the last guess at it has intimated that there is doubt in his mind. It is a practical question, and I do not like to think that we are not giving due weight to the suggestion that comes from a justice of

the supreme court on a point which, if it is decided differently from our opinion will cause untold trouble and hardship. Now it is a question as to whether it is best to ignore the difficulty or best to face it. I should think on the whole it is best to face it, because the question has now been raised. It will be raised the first time the question comes before the supreme court unless human psychology changes in the interim, and it is a good deal better, it seems to me, to start the thing on the way to perfect safety than it is to ignore the suggestion. That is the theory upon which I am proceeding. I have no doubt myself of the answer that should be given to the question.

Mr. REED. Mr. Chairman: Then the effect of that section will be to beclond the title of this stock for the next two or three years under the most favorable circumstances. I would rather stand on the Attorney General's opinion.

Mr. FOX. Mr. Chairman: It occurs to me that this amendment with reference to validating prior shares would be rather an act for the legislature, and if we adopt it as Judge Simpson has suggested then the legislature can validate the prior issues.

Mr. REED. Mr. Chairman: The very suggestion of validating the stock issues casts a worse cloud on them than if we did not do it at all.

Mr. CARSON. Mr. Chairman: Is not there a degree of apprehension expressed here which is entirely unnecessary? What we say on the floor here in debate cannot even be accepted as throwing light on the meaning of the language of an adopted instrument. It is simply the opinion of the gentlemen on the floor who happen to speak. If a gentleman retains his seat and says nothing it does not necessarily follow that he acquiesces in what is being said by the speakers on the floor. Therefore the court has come generally to the doctrine that in interpreting the constitution they will not look at debates. How can the tentative draft that we put out here be accepted as authoritive one way or the other? If it has a bearing on the point as to whether past issues of stock are valid or invalid, they will have to stand or fall as of the time they were issued, with the right of creditors and stockholders to be judicially determined. I do not feel that anything we say or do here can be cited as a possible ground for future adverse judicial decision.

Mr. FISHER. Mr. Chairman: May I ask General Carson whether or not he considers the adoption of the amendment as necessary to validate the issues of stock without par value?

Mr. CARSON. Mr. Chairman: No, I do not.

Mr. PEPPER. Mr. Chairman: There is a proposal I have to make by way of substitution which I think may meet the difficutly. If the members of the commission will look at page 75 it will be seen that section 7 begins in this way: "Shares of stock having par value shall be issued" and so on. I propose as a substitute for the pending resolution the following: Amend section 7 by inserting at the beginning thereof these words: "Shares of stock may be issued either with or without par value. Shares of stock having par value," and so forth. We shall then have a situation in which there will be a clear constitutional recognition of the existence of the right to issue no par stock, and we shall not be in the difficutly of making a special section on this subject or of finding it necessary to deal with validating provisions.

Mr. THORPE. Mr. Chairman: I second the motion.

The motion was agreed to.

The CHAIRMAN. The suggestion of Mr. Justice Simpson is therefore dropped.

The secretary read the amendment submitted in writing by the Civic Club of Allegheny County, Pittsburgh, Pa., and also suggested by H. K. Siebeneck, Esq., of Pittsburgh, Pa., as follows:

Amend by adding at the end thereof the following:

No corporation shall issue bonds except for money, labor done, or money or property actually received; and all fictitious increase of indebtedness shall be void.

This amendment was not called up.

The secretary read the amendment suggested by James Collins, Esq. of Philadelphia, as follows:

Strike out.

This amendment was not called up.

The secretary read the amendment submitted in writing by the chairman, as follows:

Amend by striking out all after the word "stock" on line 10.

The CHAIRMAN: This amendment has been suggested by the chair, and having been disposed of by other action of the commission it will be dropped.

(To be taken up by committee on style in accordance with the ruling of the chair under the following amendment.)

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVI, SECTION 8.

The committee of the whole proceeded to the consideration of section 8 of article XVI and suggested amendment.

The secretary read the amendment submitted in writing by George W. Woodruff, Esq., on behalf of Pennsylvania State Grange, as follows:

Section 8. Property Taken, Injured or Destroyed by Private and Municipal Corporations.

1 Municipal and other corporations and individuals invested with the privilege
2 of taking private property for public use shall make just compensation for prop-
3 erty taken, injured or destroyed by the construction or enlargement of their
4 works, highways or improvements, which compensation shall be paid or secured
5 before such taking, injury, or destruction. The general assembly is hereby pro-
6 hibited from depriving any person of an appeal from any preliminary assessment
7 of damages against any such corporations or individuals made by viewers or
8 otherwise; and the amount of such damages in all cases of appeal shall on the
9 demand of either party be determined by a jury according to the course of the
10 common law.

Amend by adding at the beginning thereof the following:

The general assembly may by general laws grant the right of eminent domain to municipalities, but no right of eminent domain shall ever be granted to any corporation engaged in private business, or to any public service corporation, except to railroad or canal companies; but the general assembly by general laws may provide for the exercise of the right of eminent domain by the state at the expense of any kind of public service corporation, and grant to such corporation the rights or privileges thus secured; and no such grant shall extend beyond the life of such corporation, nor in any event longer than fifty years.

The CHAIRMAN. This is a suggested amendment to article XVI, section 8. Mr. Pinchot has asked that that go over until he arrives

here from Philadelphia. He is on the train that gets here in a little while, and we will pass it until Mr. Pinchot comes in.

Mr. REED. Mr. Chairman: We did not pass on that question involving your amendment at the foot of page 76.

The CHAIRMAN. I thought we had in adopting what you proposed at the foot of page 75.

Mr. REED. Mr. Chairman: That does not have any effect on the thirty days' notice.

The CHAIRMAN. What I had in mind was to strike that out. I thought that had been passed on. Does any member of the commission desire to call that up?

Mr. REED. Mr. Chairman: I will call that up.

Mr. ENGLISH. Mr. Chairman: It seems to me that the amendment adopted is plainly a substitute for the entire last sentence and makes no reference whatever to the thirty days' notice.

The CHAIRMAN. That is the way I read it. If we are not right we can take it up in the committee on style anyhow.

ARTICLE XVI, SECTION 9.

The committee of the whole proceeded to the consideration of section 9 of article XVI with suggested amendment.

The secretary read the section and amendment submitted in writing by Hon. Alexander Simpson, Jr., of Philadelphia, as follows:

Section 9. Banking Laws.

1 Every banking law shall provide for the registry and countersigning, by an
2 officer of the state, of all notes or bills designed for circulation, and that ample
3 security to the full amount thereof shall be deposited with the auditor general
4 for the redemption of such notes or bills.

Amend by preceding by section 11 of this article, making this section read as follows:

The general assembly shall have the power by general law to provide for the incorporation of banks and trust companies, and to prescribe the powers thereof. Every banking law shall provide for the registry and countersigning, by an officer of the state, of all notes or bills designed for circulation, and that ample security to the full amount thereof be deposited with the auditor general for the redemption of such notes or bills.

This amendment was not called up.

ARTICLE XVII, SECTION 1-A.

The committee of the whole proceeded to the consideration of section 1-A of article XVII and suggested amendments.

The secretary read the section and amendment suggested by James Collins Jones, Esq., of Philadelphia, as follows:

Section 1-A .

1 The general assembly, by general laws or through such agency as it may from
2 time to time create, shall have power to regulate public service and the business
3 of all corporations engaged therein.

Amend by striking out the present title and substituting therefor the words *Public Utilities.*

Mr. CARSON. Mr. Chairman: Might not that go to the committee on style? It is simply a change of "corporations for public service" to "corporations for public utilities."

The CHAIRMAN. The chair will be satisfied to do that.

Mr. PEPPER. Mr. Chairman: Need we send that to the committee on style? It will be remembered that the present constitution has as the title of article XVI "Private Corporations" and article XVII "Railroads and Canals." The commission in making the tentative draft transferred into article XVII all matters relating to corporations engaged in public service and changed the title so that there should be balance between the two articles, and that "private corporations" in article XVI should be balanced by "corporations for public service" in article XVII. It seems to me we would rather destroy the symmetry of that work.

Mr. CARSON. You considered that?

Mr. PEPPER. We did.

Mr. CARSON. I thought it was just something that came up at this time.

The CHAIRMAN. Then the chair hears no motion to adopt this, and the section will be dropped.

The secretary read the amendment submitted in writing by T. F. Chrostwaite, president, Pennsylvania State Association of Boroughs, at public hearings April 7, 1920, as follows:

Amend further by adding at the end thereof the following: *provided, that nothing herein contained shall be construed to limit the police powers of municipalities as heretofore exercised; or and municipalities shall exercise no police powers in conflict therewith.*

This amendment was not called up.

The secretary read the amendment submitted in writing by F. P. Schoonmaker, Esq., City Solicitor, Bradford, Pa., on behalf of League of Third Class Cities, as follows:

Amend by adding at the end thereof the following: *Provided that no agency or commission created by the general assembly shall have power to regulate public service when such service is furnished by a municipality.*

This amendment was not called up.

ARTICLE XVII, SECTION 1 POSTPONED

The CHAIRMAN. Mr. Pinchot has asked that section 1 of article XVII go over until he arrives here. The chair desires to indulge him in that respect. Some of the members of the commission have requested the chair at this point to go back to article X. All the members who are interested in that section are here now.

ARTICLE X.

The committee of the whole proceeded to the consideration of article X and suggested amendments.

The secretary read the article and substitute submitted in writing by Dr. Thomas E. Finegan, Superintendent of Public Instruction, Harrisburg, Pa., as follows:

Section 1. Public School System.

1 The general assembly shall provide for the maintenance and suport of a
2 thorough and efficient system of public schools wherein all the children of this
3 commonwealth may be educated, *including the care and education of the deaf,*
4 *the dumb and the blind.*

Section 2. Diversion of School Moneys to Sectarian Schools.

1 No money raised for the support of the public schools of the commonwealth
2 shall be appropriated to or used for the support of any sectarian school.

Substitute the following article:

Section 1-A. The general assembly shall provide for the operation and maintenance of an educational system for the commonwealth. This shall include free elementary, secondary and vocational education for all the children of the commonwealth and for persons mentally and physically handicapped, free education for adults in American citizenship, schools for the training of teachers, a system of public libraries, a state university, and such other educational institutions and agencies as it may determine to be wise and necessary for the improvement of the citizenship of the commonwealth.

Section 2-A. The state university may be formed by such a federation of the University of Pennsylvania, the University of Pittsburgh and State College as may be approved by the state council of education or by such merger of these corporations as may hereafter take place in accordance with law.

Section 3-A. There is hereby created a state council of education to be composed of such citizens of the commonwealth as may be appointed by the governor pursuant to an act of the general assembly.

Section 4-A. The state council of education shall be the trustees of the state university, shall elect as their chief executive officer a state commissioner of education and shall have such other powers and duties in relation to the educational system of the commonwealth as the general assembly may prescribe.

Section 5-A. It shall be the duty of the general assembly by appropriation and through general or special forms of taxation to make adequate provision for the effective and equitable support of the educational system of the commonwealth. Not less than shall be appropriated for the annual support of such system.

Section 6-A. No money raised for the support of the educational system of the commonwealth, or any part of said system, shall be appropriated to or used for the support of any sectarian school or institution.

Section 7-A. All funds derived from receipts of state forest reservations, from escheated estate in the commonwealth, and from all other property, or money which shall in any way accrue, whether by act of assembly, devise, gift or otherwise, and any other funds as may be provided by act of assembly, shall be maintained in perpetuity and designated as the state school fund of Pennsylvania.

Section 8-A. The instruction in all public and private schools shall be given in the English language and from English texts.

Mr. PEPPER. Mr. Chairman: I am glad to call that up, sir, and purpose proposing an amendment to it, if I may be permitted to do that. In other words, I am not prepared to move that proposition which is here suggested, but I am prepared to move the proposition with an amendment, which I should like to have opportunity to propose at the right time.

Mr. FISHER. Mr. Chairman: In order to bring this matter before the Commission for action, I move the adoption of the amendment submitted by Dr. Finnegan.

Mr. CARSON. Mr. Chairman: I will second it.

On the question,

Will the committee agree to the motion?

Mr. CARSON. Mr. Chairman: I do not think it ought to be shut out without discussion. I do not understand in making the formal motion to put the matter before the committee that the gentleman making the motion is thereby hidebound in such a way that he cannot express his views either for or against the proposition.

The CHAIRMAN. Oh, no. The motion is that this substitute suggested by Dr. Finegan be adopted.

Mr. PEPPER. I move an amendment, Mr. Chairman, as follows: In section 1-A appears the words "a state university." I move to amend by substituting for the words a "state university" the words "one or more state universities," so that the section will read "The general assembly shall provide for the operation and maintenance of an educational system for the commonwealth. This shall include free elementary, secondary and vocational education for all the children of the commonwealth and for persons mentally and physically handicapped, free education for adults in American citizenship,

schools for the training of teachers, a system of public libraries, one or more state universities and, such other educational institutions and agencies as it may determine to be wise and necessary for the improvement of the citizenship of the commonwealth."

In the second place, I move to strike out section 2-A, which contains a reference to three institutions, the University of Pennsylvania, University of Pittsburgh and State College, and makes a provision for a possible combination or merger between them.

Mr. CARSON. You want to strike out the whole of section 2?

Mr. PEPPER. Strike out the whole of section 2, leaving the declaration in section 1 as a declaration that there shall be one or more state universities, and leaving the situation to develop, as it properly may, as to what the general assembly will think fit to do in the matter of the establishment of such institutions, and avoid the difficulties that come into the minds of all of us when we contemplate constitutional enactment that specifies any individual institution.

In the next place, strike out in section 4-A the words "shall be the trustees of the state university," so that that section as amended would read "The state council of education shall elect as their chief," and so on; and finally in section 5-A, which will be section 4 if section 2 is stricken out, to substitute the word "applied" for the word "appropriate," for the reason that the section contemplates both appropriation and taxation as a means of raising revenue for the educational system, and we should have a term that is applicable as well to the proceeds of a special tax as to the use of funds subject to appropriation.

I make no suggestion for the moment as to the way in which we should fill in the blank in section 5, dealing with the amount of the minimum for educational uses. So that on the whole the amendment that I propose, Mr. Chairman, if adopted, would substitute one or more state universities for a state university, would strike out all reference to specific institutions and possible combination between them, remove from the constitution the declaration that the state council for education shall be trustees for the state university, and make a verbal change affecting money to be applied to education, the verbal change being designed to meet the situation resulting from the dual source from which the funds may come, either appropriations or proceeds of special tax.

Mr. McCORMICK. What do you do with section 3-A?

Mr. PEPPER. Section 3-A was left as it is.

Mr. FISHER. Mr. Chairman: I second the amendment offered by Mr. Pepper.

On the question,

Will the committee agree to the amendment?

Mr. REED. Mr. Chairman: I would like to move a further amendment that is possibly an amendment to Mr. Pepper's, that is, to substitute the word "may" for "shall" in the third line of section 1-A, so that it shall read "The general assembly shall provide for the operation and maintenance of an educational system for the commonwealth. This may include free elementary, secondary and vocational education for all the children of the commonwealth," and so forth. In other words, you are tying us up.

The CHAIRMAN. Is that amendment accepted.

Mr. PEPPER. Mr. Chairman: I am sorry I cannot accept that. It seems to me the value of this proposal lies largely in its definite recognition by the state of the responsibility for an entire educational system, including all the features that are enumerated in the first section.

The CHAIRMAN. The first question is on the amendment proposed by Judge Reed. Is that seconded?

Mr. FISHER. Mr. Chairman: I will second it.

On the question,

Will the committee agree to the amendment to the amendment?

Mr. CARSON. Mr. Chairman: Before the vote is taken on that, it may be useful to remind the commission that the language which is in the first section, even the use of the mandatory word shall, is precisely similar to what is found in section 44 of the constitution of 1776, which reads as follows: "A school or schools shall be established in each county by the legislature, for the convenient instruction of youth, with such salaries to the masters paid by the public, as may enable them to instruct youth as low prices; and all useful learning shall be duly encouraged and promoted in one or more universities." You are right back to the words of the fathers of 1776.

Mr. REED. Mr. Chairman: The fathers of 1776 did not put into that constitution all the things that are in this provision, and I do not object, of course, to the mandatory provision that the general assembly shall provide for the operation and maintenance of an educational system for the commonwealth, but I do object to the second "shall." "This shall include free elementary, secondary and vocational education for all the children of the commonwealth and for persons mentally and physically handicapped, free education for adults in American citizenship, schools for the training of teachers, a system of public libraries, a state university" or "state universities," Mr. Pepper says, "and such other educational institutions and agencies as it may determine and wise and necessary for the improvement of the citizenship of the commonwealth." In other words, you have crystalized the fact in this constitution for all time to come; up to fifty years is the favorite period fixed here for certain things which the legislature must provide for, although they may turn out to be evils, and although some improvement may have been found in some of those things the legislature is to be tied hand and foot to the things defined. All that I suggest is that we make that permissible that they may do it.

Mr. PEPPER. Mr. Chairman: If I am able to interpret Judge Reed's thought, he has no objection to the mandatory term in its application to the common school system and training of teachers, but he has in mind a doubt as to whether or not that ought to apply to the establishment of universities.

Mr. REED. And the system of public libraries and free education for adults in American citizenship, which we think are all very commendable today, but maybe ten years from now we would not want it.

Mr. FISHER. Mr. Chairman: Would this meet the situation, or meet with the approval of the proponents, if we were to leave the first part of the section as it is and then insert the words, after the word handicap and before the words free education "and may provide for the operation and maintenance of a system of free education

for adults?" From that point down it would be optional with the legislature, and after that point it would be mandatory. Of course, if you use the term "shall" there is nothing which compels the legislature to act, and it can determine the time when it will obey the mandate of the constitution here. I take it that everything contained in the first part of the section will be acted upon at once by the legislature. The only questionable thing is as to the establishment of these new agencies of education. Would it be satisfactory now to amend it in that respect, may I ask Mr. Pepper?

Mr. PEPPER. Mr. Chairman: I dislike to seem tenacious of a view when it is so considerately questioned, but my conception of this section is that its value is found in the circumstance that it is a statement of an educational ideal. It is not really, Mr. Chairman, a grant of power. When we are discussing grants of power, it is important to distinguish between the case in which the exercise of power shall be made obligatory and the case in which its exercise is permissible; but when you are stating an ideal it is not worth while, it seems to me, to state it at all unless you make it inclusive of all the elements which at the time go to make up the ideal. I am interested in this thing because it presents to the people of the commonwealth a conception of a well-rounded and symmetrical system of education which combines all the elements of experience as discovered to be useful in the educationl system by other states. I violate no confidence, in fact I am speaking with the permission of the gentleman whom I wish to refer to, when I say that the amendments that I have proposed and which are pending are amendments that have the approval of the maker of the original proposition, Dr. Finegan. Here is an opportunity for us, at the time, when a new era has begun in the Department of Public Instruction, to give effect to the conception of the head of the department and place before the people of the state an ideal of education which, if attained, will put Pennsylvania at the head of the column of commonwealths that have taken advanced place in the educational field. It is not thinkable, Mr. Chairman, that either of two things would happen if we were to adopt this amendment. In first place, it is not thinkable that anything in the declaration would hurry the legislature into precipitate or unwise action. Senator Fisher has shown, with his usual clearness, that mere injunction laid upon the legislature, without specifying the time within which it must be complied with, lays upon it no urgency or restraint upon freedom of action as respects the time when it will comply with the duty imposed. In the second place, it is not thinkable, it seems to me, that in a modern commonwealth there should ever be any doubt that all the elements included in this category should be included in the educational system of that commonwealth. Take the question of the state university. One problem that we have been dealing with in this Commission in regard to appropriations of public funds has been the difficulty of appropriations of public funds to educational institutions. The only reason why there is an objection to appropriations of public funds to educational institutions is because appropriations are made to such institutions as are not wholly under the control of the state. The solution of the problem which ought to be acceptable to all minds is a continuance of your appropriations for higher and other education, but to couple that appropriation with a control which reaches

its limit in the case of a state university. State universities have become characteristic of American education. We have them in all the states to the west of us. The tendency is not going to stop at the western frontier of our commonwealth. State universities are to be the crown of an educational system in every enlightened commonwealth. Pennsylvania must be among the leaders, not far in the rear; and when it comes to a proposal that the legislature may contemplate one or more state universities, the proposal is in the interest of freedom rather than in the interest of making it obligatory upon the legislature to establish one only. We have a situation in this state of which we must take account, Mr. Chairman. We have institutions several of which might with advantage to the educational system and to the commonwealth become components parts of the educational system of the state, passing wholly or partly into state control. The amendment relieves us from the consideration of the present difficulty of any question of an amalgamation or combination between them, but leaves the thing in such form that a healthy approach toward unity may take place between those institutions that might become in the course of time the component part of a state university.

The time has come in education, let me urge it upon the thought of the commission, the time has come in education when the conception that all work of an institution must be done geographically at a single point has become inadequate. I spent an interesting afternoon in session with the trustees of the University of Pennsylvania recently in a discussion of the graduate school of medicine. One of the things under contemplation was in connection with advanced studies in the field of tropical medicine, one suggestion was that a very distinguished practitioner in the oriental city of Singapore should be an associate professor in the field of tropical disease and that graduate students of the department in question might be sent to him for residence in that remote place, and instruction for their graduate degree given under his direction. The time is coming, Mr. Chairman, when we may have to have an educational center radiating instruction and study to points geographically remote. There is nothing in this at all inconsistent with the centrally controlled system of education, and you may have the locality at which certain departments of instruction are conducted remote from the common center.

I hope, sir, that two things will be done in whatever action we take today. First, that we shall vindicate the existence for the commonwealth of a rounded, symmetrical and comprehensive idea of public education, and in the second place, that we shall leave the way open to solve this great problem of state activity in the field of higher education by declaring in favor of a state university system and leaving the legislature free to deal with approaches toward unity rather than by an attempt to specify that there shall be only one state university, or the equally grave mistake of attempting to force a premature combination between several.

The CHAIRMAN. As I understand, your proposition to amend, Mr. Pepper, by striking out Section 2-A, meets the views of Dr. Finegan?

Mr. PEPPER. That is correct, sir.

The CHAIRMAN. I suppose Dr. Finegan comes to that point of view not because he thinks it is best, but because he thinks it is the

only thing that can be done. Let me say this, that I think, and I do not want to take the floor to debate this—I do not happen to be a university man—Dr. Finegan's system is the system that would be the ideal system, and if this place were a sounding-board big enough to carry the message, I would send the message to some man like Mr. Frick, who had a hundred million dollars to dispose of, that he should by his will appropriate to the state, devise to the state, fifty million dollars, if that were required, to found a great university at Harrisburg, to be a great state university, upon condition that the state appropriate five million dollars a year towards its support, and then these three universities would tumble over themselves to get into the system, because if they did not they would be eliminated. Now, some great Pennsylvanian who has money enough and vision enough could do that. Is it not the time for us here to do the bold thing, irrespective of the narrow views of these institutions, and compel them to combine? Because some individual with imagination and money may compel them to combine, and if I ever run across an individual who has fifty million dollars to dispose of and does not know how to dispose of it and does not want to give it to me, I will tell him to give it to the state and found a great university here at Harrisburg, to be a real state university, like the University of Minnesota. I am prepared to vote for anything that can bring this about in order that the state may create a great system of education and a great university.

Mr. PEPPER. Mr. Chairman: It does seems to me that the bold thing is done if we make such a declaration as I propose, because in the first section of the proposal we declare not merely that there may be, but that there shall be, one or more state universities. That is the bold thing to do. It seems to me to be a mistake to make it optional. When you have done that, Mr. Chairman, do not make the mistake of trying prematurely to force institutions into a union or combination. When those institutions have got a tradition and background each peculiar to itself, where there are difficulties in the way of combinations which at first sight seem insuperable to some minds, but which under the pressure of a great ideal can gradually be overcome. It is like the dream of christian unity, which is met with all sorts of little trifling objections by denominations which in making them think that they are stating objections that are insuperable. If, Mr. Chairman, we here set before the commonwealth the educational ideal that Dr. Finegan has embodied in this first section we shall be doing the bold thing, we shall be doing the intelligent thing, and we shall be making an appeal to the benefactor of the type that you have in mind, a man who might say, "How great is the opportunity, to do something in the field of public education in America in advance of anything that has been done; here in Pennsylvania that has declared for a state university or universities, and I am going to make the thing possible."

Just as quickly as that is done the thing that the chair has in mind will follow; namely, the immediate prospect of the establishment of a great work of higher education in this commonwealth which will bring about naturally and inevitably the kind of union between institutions of higher learning which is the outcome of intellectual affinity. I earnestly hope, Mr. Chairman, that the proposal embodied in the proposed amendment will be carried.

The CHAIRMAN. I do not wish to be understood as being opposed to the amendment. It is the only feasible thing that can be done. I do not know, unfortunately, anything about universities, but it does seem to me that it will be impossible for the state to have two universities, or impossible for the state to have more than one. You might have many branches of that university, and one might be located at Singapore, but there would have to be, it seems to me, a single state university, and I say it seems to me that that university ought to be located here in the capital city and ought to have a maintenance fund from the state such as the university of Minnesota, five million dollars a year, and that would be one of the greatest endowed institutions in the world. As I say, it seems to me, if these three institutions will not combine to make that possible, then some of Judge Reed's poor friends in Pittsburgh, who have dug great fortunes out of Pennsylvania mines and Pennsylvania industries, might be willing to appropriate fifty million dollars, or the necessary number of millions of dollars, to found a real state university, and then these three institutions, it seems to me, would lose their great chance. Now, I will vote for this, for your suggestion, as the best thing. That is all that can be accomplished in the light of what the three institutions themselves think. It does seem to me that the finest thing that we can do would be to make it possible for the poorest boy in the state and poorest girl to start in at the primary grade and come out with the most finished education that the world can give, absolutely without cost. That is the thing that I have in mind that can be accomplished and this is, it seems to me, the beginning of the accomplished. This is more of a speech than the chairman ought to make.

Mr. McCORMICK. Mr. Chairman: I am in hearty accord with Mr. Pepper's amendment with the exception of the first one. I strongly feel that the word "shall" should remain in section 1-A, because I think it should be mandatory, and I am not very much afraid of that word "shall" in the constitution, if we are to be guided by the past. This state was instructed under its constitution to properly educate its children in the commonwealth. I believe we are about twenty-third or twenty-fifth in rank in the states in our union in regard to our educational system of this commonwealth, so I do not think we can make it strong enough to impress upon the legislature its responsibility and duty in this regard, but I do take exception to the amendment of a state university and in making it plural. I agree heartily with what our chairman has said, and I think properly so, as we have this peculiar situation in Pennsylvania. The state of Pennsylvania is now supporting five universities in Pennsylvania. It is an absurd system, they are scattered out two thinly over the state, and it is growing, and under the action taken a day or two ago, which permits privately controlled institutions to receive state funds, there is no reason in the world why that number of five should not increase to ten. I think you will never have a proper educational system until you get one great state university at the head of the public school system of Pennsylvania, as the chairman has said. Where it is located is another matter, but there should be one central head. If you put this constitution before the people of Pennsylvania to vote on it saying that there will be several universities possible you are going to have chaos and are going to have the alumni

of these various universities entering into this thing as a political issue, playing for their own interests and creating confusion and probably defeating the very thing that we all want. Therefore, I think this section 1-A should stay as it is, a state university, and then lead on to such other educational institutions and agencies as it may determine to be wise and necessary for the education of the citizenship of the commonwealth. Does not that give us all we need, and could not we, as our chairman said, have one state university with its branches all over Pennsylvania or outside of Pennsylvania, if necessary, and one head concentrating that authority at the head of our educational system? I am in hearty accord with all the other amendments Mr. Pepper has proposed and think we should stand behind this proposed recommendation of the superintendent of education in Pennsylvania, which I think is an excellent one, and I hope it may be adopted.

Mr. REED. Mr. Chairman: Of course, this poor little amendment of mine will be lost in this radiance of what you might call the aurora borealis of higher education that has been played so brilliantly here, but the very fact that the three speakers do not agree, the fact that four men, presumably having given considerable thought to this have suggested different amendments, the fact that Mr. Pepper does not live up to his own amendment five minutes but proceeds to strike out the state university and puts in a number of them, only emphasizes to me the wisdom of either changing this provision so that it will say that this may include certain things, or should include certain things, and shall not include certain things which the next superintendent of education may come in here and say "Nonsense, you are wasting time on the vocational training of teachers and free training in American citizenship. That is all wrong; we should do something else." I think we should trust the legislature with a declaration that those things should or may include certain elements, and not sterotype and lock this thing up for years in the constitution. That is all I care for.

Mr. THORPE. Mr. Chairman: We all agree that the Kingdom of Heaven is worth getting into and nobody else is going there except ourselves. Mr. Chairman, permit me to submit this fact: The university of California, with which I have been in correspondence for the past few weeks for information, consists of nine universities, at Berkley, at Los Angeles, San Francisco, the Lick University and a branch in Chile. Mr. Chairman, the distribution of university privilege is a question of service and not a question of geography. The honorable Chairman, with his usual clarity, speaks of centralization of a university at Harrisburg. Now, Mr. Chairman, is it not possible that you can in a big state accomplish more by distribution of opportunities than by concentration of them in a single place? We must approach this not from the University of Pennsylvania, University of Pittsburgh, State College, or Duquesne, or any other university; we must approach it from the state of Pennsylvania, we must consider what is beneficial to this commonwealth, whether concentration of opportunity at a particular point or distribution of opportunities at various points. This is an ancient state, and it has traditions. The University of Pennsylvania is an old institution, and by the mere matter of the almanac so is that of Pittsburgh, so is that of State College, but State College is more recent. There are other in-

stitutions in the state of a respectable age. The question of what shall constitute a state university is somewhat a matter of vision and comprehension, and whether you use the word in the plural or singular would really mean the same thing. It is a service that this state shall give to its people. I think we would confine our attention for the present to Judge Reed's specific proposition and say "may" or "will," which historically has been answered by General Carson, but there is a little more to be said. It is questionable whether its specification of service in a general proposition as in fundamental law is desirable for adoption. It is very doubtful. Why not provide for three lunches? Why not provide further for free transportation over the hills to the red schoolhouse when there are muddy roads or they are difficutly of access? The point in Judge Reed's objection is doubtless well taken if it be confined to the specific application of the imperative duty upon the legislature with respect to particular application of a system of education. Education is a pretty broad word. It might mean education in citizenship, which is very much talked about at present, because we are yet stirred up to the question of patriotism and loyalty, and that was much heard of after the Civil War, and it will be heard of from time to time. That is not an essential thing. Education deals in American citizenship, and the use of libraries is a mere incident. If I understand, Mr. Chairman, the whole always includes the part, and if you are going to have a system of education your are going to have the things necessary and incident thereto. Like the process of taxation of the Federal banks in certain states, it involves the principle of not merely taxation of that bank, but everything pertaning to government. So that the whole includes the part. Do not let us be confused on that point. The term "shall" is applicable to a system of education, and these little details are merely illustrations of what might be done. The discussion having branched off into the merits of the case, it seems to me that as long as that is in the minds of the Commission we should consider whether we shall use what we have or shall create anew. That is the main point. Shall we utilize the ancient university in Philadelphia and the useful one in Pittsburgh and the useful school at State College, or any other which comes within the law, and so, Mr. Chairman, I shall have to differ with you on the probability that anybody is going to die and do anything for the state of Pennsylvania on a large scale. I am afraid that the man who would leave fifty or one hundred millions to start this movement is not yet born.

The CHAIRMAN. Frick did it.

Mr. THORPE. He thought more of Princeton university than of Pennsylvania.

The CHAIRMAN. He gave more than fifty million to education.

Mr. THORPE. He did not do it in Pennsylvania.

The CHAIRMAN. No, that is what I say.

Mr. THORPE. No, sir; he was not guided by the chairman.

Mr. REED. Nor the operations of the income tax.

Mr. THORPE. Mr. Chairman: The question of the distribution of opportunity I think is quite important, not merely that it is in Harrisburg, but anywhere in the state, that the necessity of the state will require. In support of that idea, if your honorable body will turn to the facts collated in this chart on education, you will find

that that is true in all of the states in the union. There is no state in the union, so far as I know, whose great state university is entirely located in one place. I think that is true. They are scattered about according to the necessities of the situation. We must not confine ourselves to the fact that you must have all opportunities at one place or you will not have opportunities at all. I was told by a graduate of one of the great schools also that the legislature provides for the payment of the car-fare of girls and boys in the state of Tennessee to go to the state university, because another institution, being a better institution, was taking away from their attendance. I do not know whether the state of Pennsylvania is prepared to pay car-fare to Philadelphia, Pittsburgh or State College, or not. You can do that if you want to.

Mr. Chairman, I think we should disabuse ourselves of the idea that we must centralize this thing. That is not a tenable idea. If we want the opportunity, wherever it may be, whether it is Erie county, Philadelphia, Allegheny county, or Cameron county, it makes no difference where it is. This is a large state, and the young people in one part are just as much entitled to it as the others, and the more we distribute opportunity the more efficient and effective is that service.

Mr. McCORMICK. Mr. Chairman: May I ask whether under that proposal you would turn over these institutions to the state as to real estate property, and so on?

Mr. THORPE. Mr. Chairman: I am not qualified or prepared to answer that question. I am not responsible for the management of those institutions.

The CHAIRMAN. May I inquire, so as to enable me to vote intelligently, could you have more than one state university?

Mr. THORPE. Mr. Chairman: You could have a state university with branch and departments.

The CHAIRMAN. Oh, yes; I can quite understand that.

Mr. THORPE. Mr. Chairman: I think we are between the plural and singular, meaning the same thing; and if you will let me say it, in reply to my learned associate here, I would be glad to say that that would depend, sir, upon the will of the board of trustees who, having the legal title, were presented with the proposition, "Shall we dispose of it for a consideration?" If the consideration were sufficient, I would say yes; if it were not sufficient, I would say no. If the University of Pennsylvania can accomplish more by turning its equipment of twenty-five millions over to the state of Pennsylvania, why should it not do it? If the service is for the state, let us have it at whatever cost and from whatever source.

The CHAIRMAN. May the chair suggest to Mr. Pepper that if we strike out the words beginning with "free education" and ending with the word "libraries" we would overcome Judge Reed's objections.

Mr. PEPPER. Mr. Chairman: There are all sorts of types of minds. Now, Judge Reed is the type that gets the best out of a system of education, but is not the type that will conceive of an educational system that will give the best. We are doing here a piece of constructive thinking. This is not a situation in which certain things have been enumerated at haphazard. Dr. Thorpe has missed the point, I venture to think, of Dr. Finegan's proposal when he talks about the details of an educational system. These are not details, these are the great heads, so to speak, of departments of a

symmetrical educational system. May I ask the attention of the Commission to the heads which are included in this list? First comes the education of the children, "free elementary, secondary and vocational education for the children of the commonwealth." Next comes a declaration of responsibility for those who are under mental or physical disability, no matter the detail, a great class of those who are suffering from disability. Our committee on style will probably decide to eliminate the sporting word "handicapped" from the Constitution, and they will find a better word, but the idea is clear. Having dealt with children and with those irrespective of age, who are suffering from some kind of phyical or mental disability, we come specifically to the matter of adults. Judge Reed thinks that the mania for Americanization is passing fast. Dr. Thorpe furnished the correction when he said that it was a thing that had engaged attention after the Civil War and would continue to engage it in the future. If he admits that it is a thing that has engaged educational attention in the past and ought to encourage it in the present and throughout the reaches of the future, I am with him. The training of American adults in American citizenship ought to be a permanent department in any educational system. After you have dealt with the children and then, without respect of age, for those who are under mental or physical disability, and then with the education of adults, you come next to normal instruction or training of teachers. No detail. It is a great department. Then you come to the tools of the teachers, the tools of the student, the workshop of research, the libraries of the commonwealth, literature and books, the handmaids of education. Then you come to the fine fruitage of the educational system, the state university. No detail. It is the apex of the system. Now, I am entirely in agreement with the proposal of the Chair and the proposal of Mr. McCormick as the ideal towards which we must work. I want to see one great state University of Pennsylvania, and I believe those of us who live for ten years will see in Pennsylvania not only one great state university, but the only real university that there ever has been in the United States, because there is not in the United States of America to-day a single institution that deserves to be called a university. We have a great many large schools, but the test of a university, sir, is that the instruction furnished in it should be so comprehensive and so far-reaching that when a student has absorbed all in his line that there is to absorb there is no other place in the world to which he can go to get more in that line. We have been accustomed to go across the waters to finish education begun here. I want to see one great university in Pennsylvania, and, Mr. Chairman, let us think of the psychology of the situation. If you will put into this draft the declaration that there shall be a state university, at that instant you start in the minds of the devoted alumni and trusees of particular institutions the ambition that their particular institution, their child, or, to change the figure, their *alma mater*, shall be and become *the state university*. You introduce the element of competition, just as if you were to declare that there was to be an established church, and invite competition between the different churches of christendom as to which should be the one. What we should do, I submit, Mr. Chairman, in the pursuit of the ideal that we all have, what we should do is to declare that there shall be a state university or universities. Then you

will introduce into the minds of the public, not the idea of competition between several institutions, that one and only one of them may be chosen, but you will introduce the idea of several institutions entering into an economic relation to the state so that the development of that relation will be unity. Inside of ten years, if you adopt this amendment and the people accept it at the polls you will have the unified conception of education from the primary school to one great state university, and if you do not, you will throw the apple of discord among the educational institutions of this state and will be far from the attainment of the ideal that we all share. I press the amendment.

The CHAIRMAN. I will take Mr. Pepper's judgment on the question.

Mr. McCORMICK. Mr. Chairman. I move to amend section 8 to retain the one state university.

Mr. REED. Mr. Chairman: There is one motion before the committee.

The CHAIRMAN. Judge Reed's motion is before the committee.

Mr. CARSON. Mr. Chairman: I would like to say a word or two in line with the remark that Mr. Pepper made, and which was very expressively and suggestively phrased, that unless this language is carefully considered you may throw the apple of discord in such a way as to defeat absolutely the purpose that we all have in view. What is a university? It does not consist simply of buildings or dormitories or broad acres or faculties subdivided into various branches. It is not a thing that money can buy. It needs money to run it, but it is not a thing which money can buy. A university is the growth of years, it is difficult to describe; but I do not care whether it is one hundred or one hundred and fifty millions expended in a new locality, irrespective of associations with others which have long been in existence, no matter how much money should be spent here on the banks of the Susquehanna or elsewhere, you cannot make a university. You have to draw into close association with those millions generously and unselfishly expended that source of peculiar atmosphere, which is difficult to describe in these days, great libraries, great museums, the great traditions of the past, great teachers, everything that stimulates the ambition and arouses the loyalty of alumni everywhere. If you can bring all that to bear as some sort of consolidated educational force into one institution, sublimated, so to speak, by the grand idea of unity, that they are not striving in different directions or for little personal ambitions of their own, then you get somewhat of a university. Now, I am not going into the history of the University of Pennsylvania or the Western University of Pittsburgh or State College, and therefore I think it is wise in Mr. Pepper to move to strike out that a combination of them should be sufficient to constitute this one great idea. That is wise. We do not want simply a combination; but gentlemen, if you were an alumnus, as I am, and as Mr. Pepper, and a trustee moreover of one of those great universities, and you had to face faculties and discordant views in member of the board of trustees and in alumni associations everywhere, you would say, "Are you going to surrender all our great traditions, all the collections of our books, all our museums, coming down from James Logan's time and hand them over to somebody who is unsympathetic and knows nothing about them and has never been in contact with the inspiration that comes from those pages, which the

moment you open them seem to breathe the inspiration of the past and are inflamed, so to speak, by the exalted and emotional spirit of an educational system which has lifted man from barbarism and placed his soul on high as a flaming torch for the redemption of mankind? You cannot do it simply by the expenditure of million after million on buildings and dormitories. These great living forces which have spread education from one end to the other of this globe, and which unite to lift up states so that all the organized and combined interests of humanity are still more sublimated in the face of an exalted wisdom. That is your university, and you must not antogonize all these great elements which can, if wisely harmonized, make for that purpose. But it takes time. It will take time to educate the alumni of every one of these institutions. It will take time to bring their boards of trustees into some sort of harmonious thinking to open the way for it. Do not have a threat of coercion lurking in ambush that unless something is done something else will be substituted. That does not seem to me to be the part of wisdom. The whip of cocerion will never drive men accustomed to thinking, free thinkers, bold thinkers, courageous thinkers, educated thinkers. That can not be done under a whip. But if we can rise to this great thought which has been expressed here, one great university—the word "university" is comprehensive, I do not know, I have not even begun to realize in my own mind what may be involved in this proposition—but my veins throb with exultation at the thought, and Dr. Finegan's plan is a most intellegent exposition of what can be done, and I think his consenting to the striking out of that section shows that he is not so enamored of a single plan of his own as to be unwilling to accept the amendment. It would be a mistake to attempt to coerce these three great institutions into a union. You can never do it, you cannot coerce them. You can pursuade them, you can argue with them and satisfy their judgment, and it will be done. Now, that is the way I feel about it, and I want Mr. Pepper to be supported in the idea that there must be no apple of discord thrown here or quarreling or antagonizing and defeating a great purpose. We must act in wisdom, and in a way which indicates that we realize that this is one of the greatest opportunities of this great commonwealth. But we cannot create it for a long time to come. We can start the seeds this state university, reaching back to those old universities which whisper from their towers the enchantments of the middle ages. You cannot tread the sod of Oxford or Cambridge or Bologna without feeling somehow or other that however antiquated their architecture may be, however dead the leaves of their old lives, however musty and unused and unopened certain sections of their libraries may be, at the same time a library is not merely a charnel-house where the ghosts of the dead may dance, but it is a quickening forge, workhouse of thought, and out of the buried metal of the past, under the ideas of modern times, we may forge and weld great instruments for action such as make us human beings instead of mere savages of the past.

Mr. FISHER. Mr. Chairman: When I seconded Judge Reed's motion to amend by striking out the mandatory word and substituting the word which places it within the optional power of the legislature to establish the great scheme of education that has been outlined in the plans prepared by Dr. Finegan, I did not necessarily mean that I was in accord, as I usually am, with Judge Reed fully. This

is the greatest plan for a uniform system of education that has ever come before the people of Pennsylvania. This is the greatest opportunity that has ever been presented to the people of the state for a great, complete, comprehensive and effective system of education. I am not one of those who lacks pride in the accomplishments of my state along this line. I think Pennsylvania has been the pioneer in free education, and has done much along these lines, but our system has been a growth, it has been the outcome of experience. It is more or less of a patchwork, and we have never reduced it to a comprehensive and a complete system. We must remember, however, when we deal with this subject that we cannot float off on visionary schemes and forget what we have done in the past. We must keep in mind always the very practical thought that we must utilize in building this system the elements which we now have in our possession and which have been the outgrowth of the labor of the great men in the past. I think that is the thought Dr. Finegan has in mind. I am quite sure that is the thought that inspired the wonderful oratory of Mr. Pepper and General Carson. Now, I am not a university man. I confess to a little more than the "red school-house on the hill." One of the great regrets of my life was that I was not able to complete a university course. Therefore, perhaps I place a higher value on these things than if I had realized the ambitions of my boyhood days. I want to seize, and will help to seize in my humble way, this opportunity to construct a great splendid system of education that will outtop the achievements of any other state in the union, and I believe that we can do it. We have the foundation, we have the wealth, we have the ambition, and above all that we have the need. I could not help but think, as I listened to those inspired remarks presenting this splendid vision of a great scheme of what we may accomplish. So let us take advantage of our opportunity, let us not weaken our position by a weak term but let us place upon the legislature the mandatory duty in the strongest language that we can put in the constitution. I think that Judge Reed does not want to in any way weaken the educational system of this state. I have a little different appreciation of Judge Reed's hopes and purposes, I think, than my friend from Philadelphia. He seems to think that Judge Reed has the gift of drawing out of things the best, but that he has not the constructive vision to give others the opportunity. I happen to know, Mr. Pepper, a little otherwise. I know that Judge Reed does much, hopes much and purposes much in his quiet way, and I know that Judge Reed is a practical man, who is never carried away by his ideals from what he conceives to be capable of accomplishment, he thinks perhaps here that we are a bit visionary, that we have before us a scheme which is not capable of being put into constructive form. I differ from him in that respect. I only have one doubt in this work and that is in its application to the university scheme. I believe that we should have a great university. Whether that university is geographically located at a given point, or whether it is distributed in various places throughout the state, so that it could specialize here on this subject and there on that subject, is not particularly material. The question is, what are we to accomplish, what are we to achieve, what are we to get out of it in university training and service. If we keep that before us then it will be easy for us to construct a mechanical organization through

which we can realize our hopes and our desires in that respect. I would like to see the ambitions of our Chairman realized, if the best way to achieve that is by the establishment at the state capital or in the central part of the state of a great university. But I am afraid that our Chairman, with all his persuasive powers, will not be able to find the Pennsylvanian with the fifty million dollars necessary to realize what he has in view. That would be a splendid thing, but let us forget those things as matters of detail. All we can do here, all we hope to do here, is to present a scheme, a plan which can be made effective by those who follow us, by those who work through the legislature and through the various functions of government. It is not for us to say what form it shall take, where it shall be located, or of what it shall consist. I think we can safely leave that to the wisdom of the future. I am sure that the whole state will be inspired by the plan that has been here presented to do something worthy of the achievements of this great commonwealth which has always prided itself on its system of free education.

Mr. REED. Mr. Chairman: I was going to say that having been buried under a mass of flowers and wreaths and a few brickbats, and having had an intellectual treat here for the last two hours, and my seconder having gone back on me, I will withdraw the motion.

Mr. McCORMICK. Mr. Chairman: I would like to amend Mr. Pepper's amendment by retaining the words "a state university" instead of "one or more universities."

Mr. Chairman, I do not like to appear insistent in this matter, but it seems to me that we have come to the most vital period in the educational system of Pennsylvania. I want to go back again to the old question as to whether or not we ought to continue the appropriation of millions of dollars to privately controlled educational institutions or whether we are to cease turning over millions of dollars annually to these institutions and begin to build up a state university owned and controlled by the state. If we are going to adopt the former, appropriate millions of dollars to privately controlled institutions, then we might just as well, in my opinion, put in the constitution, Section 2-A and name the institutions so there is no confusion about it. Then the state system can be built upon some definite line, the people of the commonwealth would know who was to get the money, where the millions were going, and that this was to be the state university; but if we are to strike out section 2-A, which I believe should be stricken out, and if we are to build, which I believe we ultimately are going to do, it may be within ten years from now or twenty years from now, a state university belonging to the state, then I think we should amend section 1-A and put in a state university rather than one or more universities, so that the public will believe at least that the ultimate goal of our educational system is to have at the head of our public school system one great university, and there will be no camouflage for the purpose of influencing the alumni of these various institutions which are now receiving state aid, and I believe the leading alumni of those institutions, after studying this problem, are coming to the position that some of us have taken here. I have here a clipping from the Philadelphia Ledger, quoting a writer in the University of Pennsylvania magazine. He said: "We are convinced that in the opinion of the progressive alumni of this university there is one question which must

be answered by the most serious consideration which can be given to the Finegan plan, that is what are we going to do about an endowment? We have pointed out many times before the immediate need of this university of money. There are only two ways in which it can be obtained, it must either be gotten from our alumni or by the public in a state endowment, direct or by a state tax raised for a state university." That is the thought in the minds of the alumni of these institutions. If we put into this new constitution a clause that there are to be one or more universities, if this present system is to be continued and we make these large appropriations to privately controlled institutions, then it seems to me you are compelled to go to the policy of creating a council which is going to look after the expenditure of those millions by the private institutions, or you have to do away with the giving of money to private institutions and put all those millions into one institution, whatever one that may be.

I am a trustee of the Pennsylvania State College, and I have urged appropriations to that institution because I believed that it was a state institution, controlled absolutely by the state; but I want to say here on the floor of this commission as trustee of that institution that I am opposed to that institution receiving state funds if it is not absolutely a state institution, and I would not ask the legislature to appropriate one cent of money to that institution if I did not believe it was under the absolute state control, and I for one as trustee advocate if there is any question in the minds of the trustees of that institution, it should be deeded over to the state immediately, and become in fact a state institution; and if these other institutions are ready to take the same step, the University of Pittsburgh, the University of Pennsylvania, then in principle at least you have opened up another problem and another question which should be treated even from an educational stand-point as to whether or not you can have three great units in different parts of the state, probably duplicating in many instances, where it might better be done under one institution. But, as I say, in many instances work which might be better done under one institution, but I say that is a problem in itself which the great educators in this state should settle and determine; but I am convinced that this is the time, to-day, when public thought is upon this question, for us to declare ourselves as to whether we want to continue this half-breed system of private and state control or whether we want to be bold enough and honest enough with ourselves and cut out the system, that this is the time to declare that within a reasonable time this system will be changed, these institutions will have an opportunity to organize themselves on a new basis, and we will then have a great state university under state control.

The CHAIRMAN. Is Mr. McCormick's amendment seconded—to restore the words "a state university" in section 1-A?

Mr. TYSON. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. THORPE. Mr. Chairman: Is it imperative as to time? I would like to make one or two remarks unless the time is pressing. I would like to say that I think the speaker who preceded me has an entirely wrong conception. I say that with full respect and admiration for his effort and large reputation. Now, Mr. Chairman, there

is a bigger question involved her than State College, a bigger question than the University of Pennsylvania, or of Pittsburgh, or any other university. There is no university in America at the present time that can stand out as such. We have no such thing. It has been my privilege in life to study at the three universities. They were called so because their charters dscribed them as such. It is fundamentally true. During the many years I was in the University of Pennsylvania, it was the fashion to send our youth abroad, I always objected to that, and happily I am not guilty of complying with that fashion, but many of our boys went. I have heard lectures at Heidelberg, I know a little about German universities. It is but yesterday. There is not a man in the room here, including the esteemed dean, our learned Secretary, who knows a little about education, and they said years ago, "Go to Germany and the deed is done." There was a tradition, which has been entirely forgotten by late events, to show that a system of education can be so manipulated as not to contribute to the general welfare. Now, Mr. Chairman, the idea presented here by Mr. Pepper is a very large idea, it has to take time to be truly measured. Mr. Carson has approached it with his usual power of illumination; Senator Fisher has touched an aspect of it; but there are so many aspects that really we would be puzzled to undertake them all, we would be puzzled. What is a university? I was at lunch a day or two ago with one of the colleagues of the attorney general, one of the administration officers of the state, and he said there is not any university. Now, he has his son in one at the present time. We are now building at a great expense to Pennsylvania a system of roads, spending many millions. I suppose he spoke the truth. He knew what he was talking about. We are buying stone in different parts of the commonwealth at different prices without any accurate knowledge of what is the special element. We desire the best stone to use. What did the university of Pennsylvania ever do for Pennsylvania? What did the University of Pittsburgh ever do for Pennsylvania? What did the State College do for Pennsylvania? When you answer that question, and we must approach the *pro contra* as well as the positive side, What has any institution in this commonwealth ever done for the people of Pennsylvania that is worth while? Are you going to measure it in money? There have been millions given to these institutions, and millions more will be given in one way or another, but in the sense of an opportunity to bring out the highest qualities of the human mind, the highest art, science, interest and study in pure science, what has been done? I was greatly pleased yesterday to learn from our dear old friend, the late provost of the University of Pennsylvania, that the trustees in their wisdom had seen fit to put at his command the free study of the science to which he is devoted, and for which he is famous, decided to give him permission to go ahead and investigate. Let me tell you a little incident which brings it to the point. My late friend, Dr. Kennedy Duncan, came up from a meeting of a medical association at Atlanta in company with Dr. Kelley, of Johns Hopkins. You know Dr. Kelley is a great devotee of the use of radium. I am myself an illustration of the use of radium for the last eight or ten months, and I know its value. Dr. Kelley is a man of great vision, and he was saying to my friend, Dr. Duncan, "I believe, Doctor, that there are other elements that have radial activity, if we only knew what they were,"

and in conversation it was brought out. He said, "Let us investigate it. Madam Curie and Monsieur Curie brought out radium, as we all know, but there are other elements. When you and I were studying chemistry there were sixty. I do not know how many there are to-day, they are increased very much." Duncan said, "Let us try this." There were two very distinguished engineers present, well known to you all. Dr. Duncan with his usual ability presented the case to a millionaire, who said, "I will put up the money." Afterwards two distinguished bankers, whose names are well known, said ,"Why didn't you let us know, we will put up the money."

Mr. Chairman an institution that contributes to the permanent welfare of society will always find support. We are all born alike, with the difficulties of life, the perils of life, thousands who need the same thing all the time, physically, mentally and morally; and is not the function of the university to contribute to that end? Dr. Kennedy said he believes there is another thing that has radial activity. He spoke the truth. What it is we do not know. Our good friend, one of the members of the commission, Dr. Smith, we have no doubt will contribute further to the science which he has already dignified. That is the first instance, Mr. Chairman, in American history that it was ever done, that the board of trustees of a higher educational institution said, "Now we will leave you free with all the opportunities we can put in your hands to investigate." That is the idea of the university, to find out something of use, to find out something that will contribute to the welfare of man, and then not mere utility, but the visional life, the hope, the aspect, the incentive, that which will stir the human mind to do things.

Pennsylvania is a rather sordid state, Mr. Chairman, rather sordid; the United States is rather sordid; this whole breed is afflicted with the same distemper. Oxford and Cambridge to-day are changing their entire attitude. I was talking with an Oxford man not long since, and he said there is a different atmosphere there. I was speaking with a very distinguished alumnus of Cambridge, his son was there, and he has done a great deal in the service of the late war to add to the reputation of the famous family. Oxford and Cambridge will no longer be back numbers. I was at lunch with a professor of Exeter College, Oxford, and some of the Rhodes scholars came up that day. I raised a rather simple question, "How did you learn to do this?" He said, "I studied in Berlin," and I said to the distinguished gentleman, "Did you ever go up to the museum, the British museum," and he said, "Why, no." Well now, the British museum has the most complete collection of archæological matter in the world, but he went to Berlin to study archæology; all England had gone to Germany. It was just a fad, a notion, just a theory at the time. Why not in Pennsylvania, with its enormous wealth, its great future, its needs so pressing, as Senator Fisher has presented, why should you not have here that opportunity for the future that will be unexcelled in the world? I do not care where you place it or how many branches you have, but let Pennsylvania in the year of grace 1920 stand out as the exponent of the highest opportunity for the human mind. You might as well do it now, it will not cost you more later. What has Harvard ever done for Massachusetts or Cambridge? I will leave it to anybody here. You say she has sent out some of the greatest men, lawyers, some of the greatest judges and scholars, and we want

that sort of an institution in Pennsylvania. She has not done as much in the past as she will in the future. Princeton has not done as much in the past as it will do in the future, nor any other institution; there is an awakening all along the line. I was interested, looking over the last catalog of the university of Minnesota, to see what they are going to do for the benefit of that great commonwealth. Mr. Chairman, let us have a big idea. We can submit it now; if the people will not accept it that is their affair. Do not let us go on record as having left undone that which we ought to do. Let us have a big idea, the vision our distinguished friend here has made, and then say to the people of Pennsylvania there is a chance and posterity will say those men planned better than their contemporaries understood. I want to stand with the group of people who have vision. I like that. I have not vision and I would like to have it; it is not my birthright, but I would like to be in that company.

Mr. McCORMICK. Mr. Chairman: I want to clear up an apparent misunderstanding. Dr. Thorpe's argument was in support of the vision of Mr. Pepper, which I am heartily in favor of. I have absolute belief in the vision and think we are all striving after the same thing. What I want to get at is the best method to adopt to bring it about. I have not heard an argument along the line as to whether that should be by three or four or half a dozen semi-controlled institutions, or whether it should be done by one great state institution. My theory is that it should be done by one great state institution, and to carry out the best system is possible. That is the purpose of my amendment. I simply wanted to set that clearly before the Commission. I believe it can be done under one great institution rather than under the present doubtful system of the semi-controlled institutions. Therefore I have made that amendment which I hope may be adopted.

Mr. STACKPOLE. Mr. Chairman: It strikes me that this Commission has to-day reached the climax of its opportunity for service. I regard it a privilege to have been here to-day and to have heard the illuminating addresses having reference to an enlarged educational program for Pennsylvania. Like Mr. Fisher, I have been denied university training, but I yield to no man in my pride of the state and its institutions and its wonderful development, and I feel like all the rest of my colleagues that we are united on this general proposition of a great state university. I like to look ahead to the time when the great university to which we contribute shall comprehend every kind of education, leading our people up to still higher heights. When Dr. Finegan told me the other day how far down the line we were in education I felt ashamed. I did not realize that we had fallen so low. So that now I feel we should go forward in every possible way to co-ordinate the great institutions which we have, and leading on the time when we can have perhaps one great institution in one place; but until that time comes let us make use of these great universities of which the alumni are so proud. I do not feel, as a non-university man, like saying anything or taking any action here which will have a tendency perhaps to deprive us as a state of the assistance which we must have from the alumni of these great institutions in the building up of that still greater institution of the future. Therefore let us use the means at hand, the institutions which we have, looking ahead to the time farther on when we shall have one great institution at one location.

On the question recurring,

Will the committee agree to the amendment to the amendment?

It was not agreed to.

On the question recurring,

Will the committee agree to the amendment?

Mr. FOX. Mr. Chairman: It seems to me that section 5-A requires amendment. The last clause is "Not less than shall be appropriated for the annual support of such system." I do not know how we can arrive at that amount. It occurs to me that inasmuch as the prior clause of the section requires the general assembly to make adequate provision that is all that is necessary. Therefore I move to strike out that clause.

Mr. STEVENS. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question recurring,

Will the committee agree to the amendment as amended?

It was agreed to.

On the question recurring,

Will the committee agree to the substitute as amended?

It was agreed to.

The CHAIRMAN. It is the understanding of the chair, that with the adoption of the article suggested by Dr. Finegan all the other matters under this educational system fall, and the chair so rules.

Mr. PEPPER. Mr. Chairman: That is a complete statement of the whole situation.

The CHAIRMAN. Yes; and all the other suggested amendments fall.

Mr. THORPE. Mr. Chairman: Would it be necessary, as a matter of courtesy to those who advance them, to move that that be so?

The CHAIRMAN. No; unless there is objection, that will be the ruling of the chair, that they will be taken care of by the substitute which has been adopted.

The secretary read the article submitted in writing by Dr. S. B. McCormick, chancellor of the University of Pittsburgh, Pittsburgh, Pa., as follows:

Substitute the following article:

Section 1-B. The general assembly shall provide for a general system of education ascending in regular graduation from the primary, grade and district schools to the university, wherein all the children and youth of the commonwealth may be educated. The Normal School, Pennsylvania State College, and the ancient Universities in Philadelphia and Pittsburgh, chartered by the legislature under the Constitution of 1790, shall be a part of this state system of education.

Section 2-B. The general assembly shall provide the revenue and make appropriations therefrom for the adequate maintenance and support of this educational system.

Section 3-B. The general assembly shall have power, through the board of education or otherwise, to create a board of education or to create a board of control for the higher institutions included in this system, which control shall be exercised with due regard for the ancient charters and the endowments of the existing institutions thus incorporated in this state and educational system.

Section 4-B. No money raised by taxation or otherwise available for educational purposes shall be appropriated to or used for the support of any school, college or university owned by or under the control, in whole or in part, of any church or denomination, or in which any church, denominational or sectarian doctrine or tenet is taught.

This amendment was not called up.

The secretary read the article submitted in writing by Isaac A. Pennypacker, Esq., of Philadelphia, as follows:

Substitute the following article:

Section 1-C. The educational system of the commonwealth shall include public schools, normal schools, and such agencies for higher education as may be created by the general assembly or as may be established in existing educational institutions or departments thereof as hereinafter provided.

Section 2-C. There is hereby created a state council of education to be composed of such citizens of the commonwealth as may be appointed by the governor pursuant to an act of the general assembly.

Section 3-C. The state council of education shall be the trustee of such agencies for higher education as may be created by the general assembly, and the state council of education shall designate such existing educational institutions or departments thereof as shall be educational agencies of the state for higher education, with the consent of the constituted authorities thereof. The state council of education shall define the relation of such educational agencies of the state to the state educational system subject to the enactments of the general assembly.

Section 4-C. The state council of education shall elect as their chief executive officer of a state commissioner of education, and shall have such other powers and duties in relation to the educational system of the commonwealth as the general assembly may prescribe.

Section 5-C. It shall be the duty of the general assembly by appropriation or through special forms of taxation to make adequate provision for the effective support of the educational system of the commonwealth, including provisions for the education of the deaf, dumb and blind.

Section 6-C. Such public moneys as shall be appropriated or otherwise made available for the use of the state agencies for higher education shall be divided between such agencies in such proportions and for such purposes only as shall be determined by the state council of education.

Section 7-C. No money raised for the support of the educational system of the commonwealth, or any part of said system, shall be appropriated to or used for the support of any sectarian school or institution.

This amendment was not called up.

The secretary read the amendment submitted in writing by Albert H. Votaw, representing the Pennsylvania Prison Society, Philadelphia, Pa., at public hearings, April 13, 1920, as follows:

Amend section 1 by adding at the end thereof *and the direction and supervision of the schools in the correctional institutions of the state.*

This amendment was not called up.

The secretary read the amendment submitted in writing by Dr. George W. Kirchway of the New York School of Social Work, 105 East 22nd street, New York City, as follows:

Substitute for section 1 the following:

The general assembly shall provide for the maintenance and support of an efficient system of elementary and advanced public education for all the children of the commonwealth, for all illiterate, and for such others, whether citizens or aliens, as may desire to improve their condition; such system to include adequate provision for vocational training and for education in the principles and practice of free institutions of government, and to make special provisions for those handicapped by physical or mental defect or disease and for those confined in penal or correctional institutions.

This amendment was not called up.

MR. FISHER IN THE CHAIR.

ARTICLE XVI, SECTION 8.

The committee of the whole proceeded to the consideration of section 8 of article XVI and suggested amendment.

The secretary read the section and amendment submitted in writing by George W. Woodruff, Esq., on behalf of the Pennsylvania State Grange, as follows:

Section 8. Property Taken, Injured or Destroyed by Private and Municipal Corporations.

1. Municipal and other corporations and individuals invested with the privilege
2 of taking private property for public use shall make just compensation for
3 property taken, injured or destroyed by the construction or enlargement of their

4 works, highways or improvements, which compensation shall be paid or secured
5 before such taking, injury or destruction. The general assembly is hereby pro-
6 hibited from depriving any person of an appeal from any preliminary assess-
7 ment of damages against any such corporations or individuals made by viewers
8 or otherwise; and the amount of such damages in all cases of appeal shall on
9 the demand of either party be determined by a jury according to the course of
10 the common law.

Amend by adding at the beginning thereof the following:

The general assembly may by general laws grant the right of eminent domain to municipalities, but no right of eminent domain shall ever be granted to any corporation engaged in private business, or to any public service corporation, except to railroad or canal companies; but the general assembly by general laws may provide for the exercise of the right of eminent domain by the state at the expense of any kind of public service corporation, and grant to such corporation the rights or privileges thus secured; and no such grant shall extend beyond the life of such corporation, nor in any event longer than fifty years.

Mr. PINCHOT. Mr. Chairman: I move the adoption of the amendment.

Mr. REED. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. PINCHOT. Mr. Chairman: I am greatly indebted to my friend, Judge Reed, for having giving me opportunity to explain to the commission what that amendment is intended to bring about. There has been in the state for a number of years a series of efforts following the passage of the law proposed by Governor Pennypacker, or perhaps at his instance, a series of efforts to return to certain public service corporations the right of eminent domain, which they formerly had. It is perfectly true that for the building of certain kinds of public utilities the appropriation of land is necessary. On the other hand, it is the belief of those who have followed the conservation movement for some time that to grant that right directly to these utilities when the utilities are not likely to be permanent in character, as in the case of railroads and canals or rivers would be a mistake, and the amendment in question is an effort to reconcile these two points of view. It provides that where such incorporation is necessary in the case of these corporations, public service utilities, the state itself shall exercise that right and lease to the corporation, under terms which would be equitable all around, so that at the time when that lease terminates the land may return to the state, and so that through this land the state may increase its control over these corporations. This brings the matter, in my judgment, into harmony both with the stage of development and with the necessity for the state to protect its own rights and for that reason the amendment is suggested.

Mr. REED. Mr. Chairman: I think the amendment should be read carefully before it is considered, because there seems to be an ambiguity in it. "No right of eminent domain shall ever be granted to any corporation engaged in private business, or to any public service corporation, except to railroad or canal companies; but the general assembly by general laws may provide for the excercise of the right of eminent domain by the state," and so on. Is it the intention of the mover that railroad and canal companies shall have the right of eminent domain as they have it now?

Mr. PINCHOT. Mr. Chairman: Yes. This would make no change. The intention is to make no change whatever in the right of eminent domain of public service corporations which now have it, but only to provide a means of getting out of the rather difficult situation

where certain types of public service corporation do not now have that right and are asking for it and are steadily being refused, as by the last legislature, thereby halting developments. This amendment is intended to provide a way in which that development can proceed all around.

The CHAIRMAN. Is the purpose, Mr. Pinchot, to continue to electric companies and pipe line companies and other companies, save the two mentioned here, the right or power of eminent domain?

Mr. PINCHOT. Mr. Chairman: The last legislature refused to grant them that right.

The CHAIRMAN. May I ask how these companies would function if some individual property owner could stop the extension of their lines?

Mr. PINCHOT. Mr. Chairman, The purpose of this amendment is to prevent such a step. When such a situation arises then the state itself may take over the land and exercise its own right of domain and immediately lease the right to use it to the company, so that we have come to a point where, irrespective of remedial legislation, for many years this situation exists.

Mr. REED. Mr. Chairman: It is not intended as a limitation, but it is an additional privilege. It is a method, from my point of view, of overcoming a difficulty which now exists.

Mr. PINCHOT. Mr. Chairman: The method of overcoming the difficulty as it now exists. In other words, it happens that private companies cannot get rights of way, so this provides the method by which they can secure the rights, but at the same time safeguards the rights of the state, and is intended to facilitate development, and my belief is that it will do so.

Mr. FOX. Mr. Chairman: I would like to ask Mr. Pinchot what his thought is in connection with the last phrase of this prososed amendment, "no such grant shall extend beyond the life of such corporation, or in any event longer than fifty years."

Mr. PINCHOT. Mr. Chairman: That matter I had expected to discuss fully in connection with water power, but I am very glad to allude to it here. There has been for years fought out in the national Congress a controversy between the government and water power companies. Water developments or water power grants should be given only for such a term as would provide for profitable development, and then that the right granted should return to the government to be redisposed of as conditions at that time may require. At last the matter has been settled after fifteen years of controversy, and the law has passed both Houses in somewhat different form and has been agreed upon in conference in the House, and announcement has been made that it will pass the Senate, making this specific limitation which reaches a substantial agreement on the part of the respective parties. The idea of this limitation of fifty years is that at the end of that time new conditions of grants could be made or readjusted as the public interest may require, many of these corporations being in their nature permanent or perpetual.

The CHAIRMAN. Mr. Pinchot, might not the effect at the end of the period be to destroy a great utility? For instance, a telephone company or an electric light company having a line under a limited right of that kind would be absolutely destroyed, by failure to renew the grant? How would you remedy that?

Mr. PINCHOT. Mr. Chairman: That is met in this way in this particular law. It is provided in the law that at the end of fifty years either the government may take over the right itself or may release it again to the old corporation. In case it does not release to the old corporation under conditions equitable, then it shall make a reasonable compensation, the terms of which are provided for in the law, so that whatever happens the people who have put their capital in the enterprise will be safeguarded. This is the law which is now about to be passed.

The CHAIRMAN. But would not they be denied any power to protect themselves and be obliged to accept whatever might be estimated?

Mr. PINCHOT. Mr. Chairman: It is provided that the compensation shall be reasonable and in view of what the situation will be, and they have fifty years in which to adjust themselves to it.

The CHAIRMAN. Would corporations now enjoying this right subsequently be deprived of it under this proposal?

Mr. PINCHOT. Mr. Chairman: I might say in addition that the development of water power on the national forest which has been going on under substantially the same terms as the law now about to go into effect has been more rapid and successful than in any other part of the United States, the intention by no means on my part being not to exclude companies in existence, but merely to facilitate the obtaining of terms which will be fair all around.

Mr. FOX. Mr. Chairman: This is a very dangerous proposition, and while it is true, as Mr. Pinchot has said, it may be desirable to do this in reference to grants of water powers, yet this language is not qualified in such way as he indicates that the legislation of the United States is to be qualified, and if we adopt this proposition as it is written now it may interfere very seriously with corporations in existence. I think it is objectionable from another standpoint. This matter was introduced when we were having public hearings, and it was thought that it would be very difficult for any corporation to finance its affairs with a provision of this kind staring it in the face, and I hope therefore that Mr. Pinchot's suggestion will not prevail.

Mr. PINCHOT. Mr. Chairman: May I answer Judge Fox? I want to call his attention to the fact that this does not apply to any grants now in existence.

Mr. FOX. It does not say so.

Mr. PINCHOT. I had understood that such a thing as an *ex post facto* law was impossible and therefore could not apply.

Mr. FOX. Nor in any event longer than fifty years.

Mr. PINCHOT. Mr. Chairman: That is true, no such grant in any event shall extend longer than fifty years. I am willing to accept any form of words that the gentleman will suggest. In the second place, I want to say as to the matter of development that this has beeen very thoroughly threshed out during the last fifteen years, and it has become clear that instead of limiting development, development proceeeds on terms of this kind as an actual matter of fact more rapidly than it does elsewhere.

Mr. REED. Mr. Chairman: I would like to ask the gentleman why he discriminates in favor of railroads and canals and against electric light, telephone and telegraph companies. An electric light

company has the right of eminent domain and can erect its poles and draw its wires fifty feet up in the air and disturb nobody, and why it should not have the privilege as against railroads and canals which operate to the exclusion of everybody else is a question I would like to have answered.

Mr. PINCHOT. Mr. Chairman: A railroad or canal in its actual location in substatially a permanent improvement, and it does take possession of and use a permanent source of mechanical power. This whole matter, Mr. Chairman, naturally would come up in connection with water power. I am very strongly of the belief that any grant which involves the permanent acquistion and use of a source of mechanical power has especial need of control by government, and for that reason I believe that such public service corporations as railroads or canals ought to be controlled under these terms for the reasons that they are either semi-permanent, like pipelines which disappear when the oil is exhausted, or that they are permanent in the sense that they are permanently located. Then the rights granted would return for readjustment at the end of a definite time. It is impossible for us to foresee now what the needs of our descendents will be at the end of fifty years, and therefore it is wrong, as I say, at this time for us to attempt to impose upon them conditions the effect of which it is impossible for us to calculate.

Mr. REED. Mr. Chairman. There is another question I would like to ask. Under the power of eminent domain, take a natural gas company or water company, and natural gas companies have the right of eminent domain. They condemn, and use the property as long as they need it, and then when they take the pipes up it returns to the owner. Now it has been held, I think I am correct, that when the commonwealth takes, it takes nothing less than a perpetual fee-simple title. In other words, when it does take it, that has been construed to be perpetual title. Now, suppose a natural gas company has applied to the state of Pennsylvania to take for it a right of way through Greene county to reach the gas wells, and then at the end of fifty years or less the gas is exhausted. It pulls up its lines and goes out of business. There is a perpetual fee-simple title in the commonwealth right through the center of Greene county, and unless you have legislation it cannot be abandoned, and is a cloud on the title of every farm.

Mr. PINCHOT. Mr. Chairman: I understand it could be abandoned.

Mr. REED. Mr. Chairman: That would have to be by legislation.

Mr. PINCHOT. Mr. Chairman: This would have to be enforced by legislation.

Mr. SCHAFFER. I want to suggest that if this amendment is adopted it is up to the street railway system of the state. They have the same right of eminent domain, exercised under the act of 1917, that the railroads have, and the supreme court has decided that railroads may use electric power, and have decided that electric railways may not use steam power. Now, there are thousands and millions of dollars invested on the face of not only the rights of way as they exist, but invested on the face of future development, and unless you have the right of eminent domain freely to be exercised the electric railway interests of the state are hampered. Some day, after we get out of the clouds that we are in now, we are

going to start on the great system of development again; but you and I and every member of the commission who has been concerned with litigation of this kind knows that the difficulty of electric railway companies was the need of the right of eminent domain so that we might not hold up a great development. The lack of the right of eminent domain resulted in the passage of laws that gave the electric railways the right of eminent domain.

My thought is that under the system as it now exists in Pennsylvania of the exercise of eminent domain, with the check which exists by the public service commission, there is absolutely no harm done to anybody who may exercise the right of eminent domain now, and instead of the property owners being hurt, they are helped, because it gives them the opportunity to receive in damages, in some instances, more than they could get for the entire farm. I have never seen anybody in all my experience who was hurt by the right of eminent domain. I have never tried a case, and I have tried hundreds of them, in which the person who owned the property was not fully and adequately compensated for all the damage that was done, and after the street railway went through, or the railroad or electric light company, or any other eminent-domainer went through, I have never seen where you could get the property owner to say, "Well, take the public facility away and we will hand you back your money." Oh, no, that never happens. So that I do not think any harm is done in Pennsylvania under the act of eminent domain as we safeguard it with opportunities to the common pleas, with trial before juries, twelve men selected at large, and no harm is done to anybody that I have ever seen; and I have been on both sides of this question to a very great extent during the whole of my professional career.

Mr. PINCHOT. Is not an electric railway a railroad.

Mr. SCHAFFER. No, sir; a street railway is a street railway under the act of 1889.

Mr. PINCHOT. Then this would not cover a street railway.

Mr. SCHAFFER. No, sir.

Mr. PINCHOT. It was intended to cover street railways.

Mr. ENGLISH. Mr. Chairman: It seems to me that this section is open to a rather serious legal objection. I take it that the purpose of it, at least the secondary purpose of it, is to provide some sort of revenue for the commonwealth. Necessarily, if the property is taken by the state in order that the state may secure for itself the purchase price that would have to be paid, some kind of an arangement would have to be entered into by which the utility would have to pay something to the state, and I assume that those who are in charge of the state's interest would see to it that it does not suffer at all in the bargain with the utility. That raises the question as to whether the taking of the land for the purpose of leasing it or granting it to a utility in exchange for a financial consideration to be paid to the state is a taking of the property for public use. I very much doubt it, and no matter what this constitution may say, the owner of the property is always sheltered by the provision in the federal constitution that no property under any circumstances or in any jurisdiction can be taken except for a public use, and I do not believe that the Supreme Court of the United States would ever hold that the taking of land for the purpose of leasing it to a utility for money to be paid into the public treasury is taking the land or taking the property for public use.

Mr. PINCHOT. Mr. Chairman: I am not a lawyer, but I do know that the United States government is constantly leasing its own land for revenue to public service corporations and no attack is ever made on the unconstitutionality of taking it.

Mr. REED. Is not that land they have condemned.

Mr. PINCHOT. It is not land they have condemned. Now, whether there is a legal distinction between these two I am not lawyer enough to say.

Mr. ENGLISH. Mr. Chairman: May I ask the gentleman whether he knows of a case where land condemned by the government and taken over by the right of eminent domain has been leased to a public utility—

Mr. PINCHOT. Mr. Chairman: I do not know, I am not lawyer enough to distinguish between those cases. Then I would also like to call attention to the fact that you have here a situation which is a serious one. There are efforts to pass through the legislature laws the right of eminent domain to public service corporations. They fail year after year in my judgment, and I have had some opportunity of preventing the passage of them, or tried to. One suggestion was vetoed by the governor last session. It is necessary for development that these rights should be exercised somehow, and this is an effort to bring that about.

On the question recurring,

Will the committee agree to the motion?

It was not agreed to.

RECESS.

Mrs. MILLER. Mr. Chairman: I move the committee do now take a recess until 1.30 o'clock this afternoon.

Mr. REED. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 1 o'clock P. M. the committee took a recess until 1.30 o'clock P. M.

AFTER RECESS.

The committee of the whole reconvened at 1.30 o'clock P. M.

The Chairman, William I. Schaffer, in the chair.

The CHAIRMAN. It is very vital that we finish what we have before us this afternoon, because in conversation with members of the commission I am quite sure that, owing to their engagements it will be almost impossible to get a quorum together before the middle of the summer. I do not want to curtail any debate, but if we stay down as close to brass tacks this afternoon as possible I think we can finish up what we have on hand. It is needless to say that it is important that we maintain a quorum until we are through. If the chair goes too fast for anybody, if you will just check him he will moderate his speed.

We have disposed of everything down to article XVII on page 78 and I think we have disposed of section 1-A, so that the first suggested amendment is to section 1 of article XVII, the suggested amendment being one proposed by George W. Woodruff on behalf of the Pennsylvania State Grange.

ARTICLE XVII, SECTION 1.

The committee of the whole proceeded to the consideration of section 1 of article XVII and suggested amendment.

The secretary read the section and amendment submitted in writing by George W. Woodruff, Esq., on behalf of the Pennsylvania State Grange as follows:

Section 1. Railroads and Canals to be Public Highways and Common Carriers.—Connection With Other Lines.

All railroads and canals shall be public highways, and all railroad and canal companies shall be common carriers. Any association or corporation organized for the purpose shall have the right to construct and operate a railroad between any points within this state, and to connect at the state line with railroads of other states. Any canal corporation shall have the right to construct and operate a canal between any two points within the state susceptible of connection by waterway and to connect at the state line with the canals or waterways of other states. Every railroad company shall have the right with its road to intersect, connect or cross any other railroad; and shall receive and transport each others passengers, tonnage and cars loaded or empty, without delay or discrimination. Every canal corporation shall have the right with its canal to intersect, connect with or cross any other canal or to cross any railroad upon such terms and under such conditions as the general assembly may by general law determine; and shall without delay or discrimination receive and transport each the others passengers and tonnage and permit the passage of one anothers boats loaded or empty; and the general assembly may by general laws provide for the interchangeable receipt and transportation of passengers and tonnage by canals and railroads.

Note by Secretary. This section, which is dropped from the preliminary draft, should be retained, as an examination of the proceedings shows it to have been adopted, as in report No. 16, on February 4.

Retain section in present constitution amended to read as follows:

All railroads and canals shall be public highways, and all railroad and canal companies shall be common carriers [.],*and under general laws* [Any association or corporation organized for the purpose] shall have the right to construct and operate [a railroad] *railroads and canals* between any points within this state, [and] to connect at the state line with railroads and *canals* of other states [.] *and to* [Every railroad company shall have the right with its road to] intersect, connect with, or cross any other railroad *or canal;* and *also under general laws shall without delay or discrimination* receive and transport each the others passengers, [tonnage and cars loaded or empty, without delay or discrimination] *and freight, also cars as between railroads and barges or other vessels as between canals; and to that end shall, except when specially permitted by competent state authority authorized thereto by general laws, build and construct railroads and canals in conformity with fixed standards.*

Mr. PINCHOT. Mr. Chairman: May I ask a question before moving the approval of that amendment? Would it be possible to have it understood, in order to facilitate the plan you have mentioned, that there are some obvious mistakes in the amendment and the thing might be approved in principle and the amendment referred to the committee on style?

The CHAIRMAN. I think that will greatly facilitate the matter.

Mr. PINCHOT. Mr. Chairman: With that understanding I will move the adoption of the amendment on page 79.

Mr. McCORMICK. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. PINCHOT. While the members are looking over it I would like to say that the purpose of the amendment is to make possible the development throughout the state of an extensive canal system at whatever time that may seem wise.

Mr. McCORMICK. Mr. Chairman: Should that be waterways as well as canals?

Mr. PINCHOT. Yes, waterways.

Mr. McCORMICK. It only says canals. Would a waterway be a canal if they utilize the rivers?

The CHAIRMAN. I think so. The old canals lock in and out of rivers.

On the question recurring,

Will the committee agree to the motion?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVII, SECTION 2-A.

The committee of the whole proceeded to the consideration of section 2-A of article XVII and suggested amendments.

The secretary read the section and amendment submitted in writing by T. F. Chrostwaite, president, Pennsylvania State Association of Boroughs, at public hearings April 7, 1920, as follows:

Section 2-A. Regulation of Telegraph Lines.

1 Any corporation organized for the purpose shall have the right to construct
2 and maintain lines of telegraph or telephone within this state and to connect
3 same with other lines.

Amend by renumbering as section A-2.

Amend further by adding at the end thereof the following: *except lines owned or operated by municipal corporations. Or, including lines owned or operated by municipal corporations.*

This amendment was not called up.

The secretary read the amendment submitted by John A. McSparran, master, Pennsylvania State Grange, at public hearing April 21, 1920, as follows:

Amend by inserting on line 1 after word "right" the words *under general laws.*

This amendment was not called up.

ARTICLE XVII, SECTION 2-B.

The committee of the whole proceeded to the consideration of section 2-B of article XVII and suggested amendment.

The secretary read the section and amendment submitted in writing by Hon. Alexander Simpson, of Philadelphia, as follows:

Section 2-B. Construction of Passenger Railways in Cities, Boroughs and Townships.

Transfer section 17, municipalities, to this article. That section reads as follows:

No street passenger railway shall be constructed within the limits of any city, borough or township without the consent of its local authorities; provided, that nothing in this constitution shall be so construed as to restrict the police power of the state over the operation of public utilities.

Mr. ENGLISH. Mr. Chairman: It seems to me that this is merely a matter of arrangement in connection with the constitution.

The CHAIRMAN. That should go to the committee on style, and it will be so marked.

ARTICLE XVII, SECTION 3.

The committee of the whole proceeded to the consideration of section 3 of article XVII and suggested amendment.

The secretary read the section and amendment submitted by John A. McSparran, master, Pennsylvania State Grange, at public hearings April 21, 1920, as follows:

Section 3. No Discrimination in Service.

1 All individuals, associations and corporations shall have equal right to have
2 persons and property transported over railroads and canals, and no undue or
3 unreasonable discrimination shall be made in charges for, or in facilities for,
4 transportation of freight or pasengers within the state or coming from or going
5 to any other state. Persons and property transported over any railroad shall
6 be delivered at any station at charges not exceeding the charges for transpor-
7 tation of persons and property of the same class in the same direction to any
8 more distant station; but excursion and commutation tickets may be issued at
9 special rates.

Amend so that the section shall read as follows:

All individuals, associations and corporations shall have equal right to have persons and property transported over railroads and canals, *and messages over telephone and telegraph lines*, and no undue or unreasonable discrimination shall be made in charges for, or in facilities for, transportation of freight or passengers *or transmission of messages* within the state or coming from or going to any other state. Persons and property *and messages* transported or *transmitted* over any railroad, *canal, or telepraph line* shall be delivered *at* [any station] *destination* at charges not exceeding the charges for transportation of persons and property *or messages*, of the same class, in the same direction, to any more distant station; but excursion and commutation tickets may be issued at special rates.

Mr. PEPPER. Mr. Chairman: I move that the amendment be adopted.

Mr. FOX. I second the motion.

The motion was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVII, SECTION 4.

The committee of the whole proceeded to the consideration of section 4 of article XVII and suggested amendments.

The secretary read the section and amendment submitted by Ernest H. Davis, of Williamsport, Pa., at public hearings April 13, 1920, as follows:

Section 4. Consolidation Permitted.

1 Subject to such regulations as shall be prescribed by general law or by such
2 agency as may be constituted from time to time by the general assembly, cor-
3 porations for public service may consolidate with or purchase the property of
4 or may, through stock ownership or otherwise, acquire and exercise the control
5 of other corporations formed for the same or a kindred purpose.

Amend by inserting in line 3 after the word "property" the words *and franchises*, by inserting in line 5 after the word "other" the words *public service*, and by striking out of the last line the words [formed for the same or a kindred purpose].

Mr. ENGLISH. Mr. Chairman: I move the adoption of this amendment.

Mr. FOX. Mr. Chairman: I second the motion.

The motion was agreed to.

The secretary read the section and amendment submitted by John A. McSparran, master, Pennsylvania State Grange, at public hearings April 21, 1920, as follows:

Strike out the amendment and retain the section as in the present constitution, which reads as follows:

No railroad, canal or other corporation, or the lessees, purchasers or managers of any railroad or canal corporation, shall consolidate the stock, property or franchises of such corporation with, or lease, or purchase the works or franchises of, or in any way control any other railroad or canal corporation owning or having under

its control a parallel or competing line; nor shall any officer of such railroad or canal corporation act as an officer of any other railroad or canal corporation owning or having the control of a parallel or competing line; and the question whether railroads or canals are parallel or competing lines shall when demanded by the party complainant, be decided by a jury as in other civil issues.

This amendment was not called up.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVII, SECTION 5.

The committee of the whole proceeded to the consideration of section 5 of article XVII and suggested amendment.

The secretary read the section and amendment submitted in writing by Hon. Francis Shunk Brown, of Philadelphia, as follows:

Section 5. Limitation of Powers.

No incorporated company doing the business of a common carrier shall, directly or indirectly, prosecute or engage in mining or manufacturing articles for transportation over its works; nor shall such company, directly or indirectly, engage in any other business than that of common carriers, or hold or acquire lands, freehold or leasehold, directly or indirectly, except such as shall be necessary for carrying on its business; but any mining or manufacturing company may carry the products of its mines and manufactories on its railroad or canal not exceeding fifty miles in length.

Amend by adding at the end thereof the following: *and any common carrier using electricity as a motive power, when authorized by general law, may engage in the business of furnishing electricity to others for light, heat or power purposes, and such purposes shall be considered kindred purposes in considering the provisions of this article.*

Mr. PEPPER. Mr. Chairman: I move the adoption of this amendment, as it seems to be an important one.

Mr. ENGLISH. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVII, SECTION 6.

The committee of the whole proceeded to the consideration of section 6 of article XVII and suggested amendment.

The secretary read the section and amendment submitted by Dr. Francis Newton Thorpe, Commissioner, and also by the Pennsylvania State Grange as follows:

Section 6. Officers Not to be Interested in Contracts.

Dropped.

This section in the present constitution reads as follows:

No president, director or officer, agent or employe of any railroad or canal company shall be interested, directly or indirectly, in the furnishing of material or supplies to such company, or in the business of transportation as a common carrier of freight or passengers over the works, owned, leased, controlled or worked by such company.

Retain this section as in present constitution.

The CHAIRMAN. This amendment is suggested by Dr. Thorpe and contains a section that was dropped out of the constitution. Is this amendment called up?

Mr. THORPE. Mr. Chairman: I move that the amendment be adopted.

Mr. McCORMICK. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. PEPPER. Mr. Chairman: You will remember, I think the members of the commission will remember, that this matter was debated at the time when the section was originally before us, and the reason that we dropped it was not because there was anything unsound in the proposition, but because by transferring it into an article which deals with all public utilities that is, corporations affected with public interest, it would seem like an unfortunate discrimination to have a declaration of this sort applicable only to the officers of companies engaged in transportation. The principle that is here announced is the principle that is equally applicable to the servants of all corporations, and it would be rather unfortunate to leave, it seems to me, in the article dealing with public service corporations a section which seemed by exclusion not to be applicable to officers to whom it ought equally to apply, and the difficulty about amending it so as to apply to all the officers of corporations included in article XVII is that when you come to do that you realize that the principle announced is really equally applicable to all corporate officers, even in private corporations, and when you find that the principle is as broad in its application as that you then realize that there is already an applicable rule of general law.

The CHAIRMAN. It really is legislative?

Mr. PEPPER. I should think so.

Mr. FISHER. Mr. Chairman: If you will just recall, I think you will remember that that was the consensus of opinion of the Commission when it was discussed before. If the principle is right here it should be applied to all public service companies.

Mr. PEPPER. Even to private corporations?

Mr. FISHER. Even to private corporations. But the idea particularly is to apply it to transportation companies. Now, the necessity for that application is removed by the establishment of a public service commission which controls the rates which may be charged and the opinion of public service companies. It would be unfortunate to put this in a constitutional provision now, because in the way business is done now through the machinery of corporations and the corporation might be very seriously crippled because of a stockholder in one company being interested as an officer in the other. There is no moral turpitude in the man who is interested in one corporation selling his services or product to another corporation. It was only put in for the protection of the public. That protection now is afforded through other instrumentalities.

On the quesqtion recurring,

Will the committee agree to the motion?

It was not agreed to.

ARTICLE XVII, SECTION 9-A (NEW)

The committee of the whole proceeded to the consideration of the proposed new section 9-A of article XVII.

The secretary read the proposed new section submitted on behalf of the Pennsylvania State Grange by George W. Woodruff, Esq., as follows:

Section 9-A. New.

Subject to the title of the United States in the navigable waters and the title and rights of riparian owners, the state asserts its ownership up to the line of ordinary

high water in streams and lakes, and of ordinary high tide; and no right, interest, or privilege in any waters or the use thereof owned by the state, nor in the beds underneath such waters, shall be granted except under general laws; and unless the right is to be exercised by the state or a municipality, such grants shall be conditioned on prompt development, continuous beneficial use, a reasonable compensation for the privileges granted, a termination of the grant in not more than fifty years, and remuneration to the grantee, to the extent his license shall not be removed, of an amount equal to the actual cost of his physical improvements, less depreciation and any amortization required by the grant.

Mr. PINCHOT. Mr. Chairman: I move the adoption of a substitute, as follows: "No right, interest or privilege in any waters or the use thereof or the beds underneath such waters shall be granted by the commonwealth of Pennsylvania except under general laws for a period not exceeding fifty years and on condition of reasonable compensation."

Mr. PEPPER. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the substitute?

Mr. PINCHOT. Mr. Chairman: I shall only say a word, that the purpose of that amendment is to bring about the development of water power within the state of Pennsylvania and under the authority of the state under the same condition as have already been adopted by the national government. I have already put in the hands of the members of the commission a short statement indicating how tremendously important the development of water power is. I wish to repeat in this connection that these are the conditions which have turned out to be successful in actual practice under the federal government.

Mr. FISHER. Mr. Chairman: May I ask Mr. Pinchot if the only purpose of this amendment is not the limitation of fifty years? And whether or not under existing provisions, the state does not have full and absolute control of its streams?

Mr. PINCHOT. Mr. Chairman: The state is in the habit of granting rights in perpetuity and without compensation, and that I believe to be extremely unfortunate. In view of the fact that water power is the power of the future, the development is destined to be tremendous. Just in the word, the actual amount of power that is now ready for development without storage is more than enough to compensate for all the coal used in the United States now. This matter seems to be of sufficient importance to be incorporated in the Constitution.

Mr. REED. Mr. Chairman: I would like to ask the gentleman why he includes the beds under the waters. For instance, we have a situation in Pittsburgh, a company in which I am not interested at all, of a company which built its power-house on one side of the Allegheny river, and in order to get coal has, with the consent of the state, driven a tunnel under the river to reach the coal mine on the other side. Under this you would limit it to fifty years, and the power-house is built for one hundred.

The CHAIRMAN. If I may suggest, there is a more serious question involved. I am in favor of the general principle, but as this is drawn it will absolutely hamstring certain developments of the state, and that is the development of the port of Philadelphia. Under the act of 1913 the state can grant in perpetuity, ought to grant in perpetuity, waters that are in the beds of navigable streams, and particularly tidal rivers, to the abutting owner. Now it is quite obvious—

I am going to argue a case next week, which involves a sanction of this public policy. It is very obvious that the lines of the harbor of Philadelphia are going to go out to the deep channel some day, and they can only go out by the riprarian owners patenting out of the state the bed of the river and filling in the land, and they will put great construction on it. They have already done that with Hog Island and have patented out of the state some eighty-odd acres from the bed of the Delaware river. I represent the Westinghouse Company, and they have a great project for the development of the Delaware river front that will require them to go out maybe five hundred yards or more to the line of Little Tinicum island. Now that cannot be done if this should pass.

Mr. PINCHOT. It will only be for fifty years.

The CHAIRMAN. Nobody will put manufacturing establishments on reclaimed lands for fifty years.

Mr. PINCHOT. Would it meet your objection if we eliminated the words "or the beds underneath such waters," making the amendment apply strictly to the waters and the use thereof?

The CHAIRMAN. I think that would eliminate the difficulty I have in mind.

Mr. PEPPER. Mr. Chairman: It also meets Judge Reed's very popular criticism of the section.

The CHAIRMAN. That would give you control of the water power. If I understand Mr. Pinchot, this shall be amended by striking out the words "or beds underneath such waters."

Mr. PINCHOT. Mr. Chairman: Yes.

The CHAIRMAN. This is offered as a substitute for section 9-A?

Mr. PINCHOT. Mr. Chairman: Yes.

Mr. FOX. Mr. Chairman: Does that cover the objection that you raised? Would it not give your client an interest or privilege in the waters of the Delaware as well as the bed?

The CHAIRMAN. I think not. It seems to me that when the state cedes the land underneath the water it only does it as the national government changes the navigation lines. They have changed them already. For instance, at Hog Island they changed it by putting in a great dyke. They could not navigate up to the dyke. The state will not patent any lands that are under navigable water in tidal streams. I think if it is confined to the use of the waters it does not interfere with the development.

Mr. McCORMICK. Mr. Chairman: Would it do to insert the words "for power purposes?"

Mr. CHAIRMAN. I think that would qualify it. No rights, interest or privileges in any waters or the use thereof for power purposes."

Mr. McCORMICK. "Or the beds underneath such waters."

Mr. CHAIRMAN. I think that would absolutely hamstring it as far as Philadelphia is concerned.

Mr. McCORMICK. For power purposes?

The CHAIRMAN. Suppose somebody were to find some way of harnessing the tide? I would be afraid of that, Mr. McCormick. It is a very large question for the port of Philadelphia.

Mr. PEPPER. It seems to me, Mr. Chairman, you have it in very good form when you modify it so as to read "No rights, interest or

privileges in any waters or the use thereof for power purposes shall be granted by the commonwealth," and so on.

The CHAIRMAN. It will be considered as amended in that way.

On the question recurring,

Will the committee agree to the substitute?

It was agreed to.

Mr. McCORMICK. Mr. Chairman: Should that be water power purposes? It might be utilized for water under boilers or other purposes which create power.

Mr. PINCHOT. I understand that was the purpose of your suggestion.

Mr. McCORMICK. It is a question of style.

Mr. PINCHOT. The committee on style will fix that.

The CHAIRMAN. If the members will keep the chair straight it is the chair's understanding that article XVII has been completely covered by what we have just done. We struck out all of Mr. Edmonds' propositions relating to article XVII by the final action we took this morning and adopted a substitute and we have acted on Mr. Taylor's suggestion on article XVII, and that is completely disposed of.

Mr. PINCHOT. May I rise to a point of information? Was section 3 of article XVII passed or adopted?

The CHAIRMAN. For section 3 of article XVII, a substitute was adopted, a substitute for that whole proposition.

The next matter to come before the committee is article XVIII-A, municipalities. The first suggested amendment is on page 88, article XVIII-A.

ARTICLE XVIII-A, SECTION 1.

The committee of the whole proceeded to the consideration of section 1 of article XVIII-A and suggested amendments.

The secretary read the section and amendment submitted by the Secretary, as follows:

Section 1. Kinds of Municipalities.

1 The municipalities of this commonwealth are counties, townships, cities, bor-
2 oughs, school districts, and such other incorporated districts as the general
3 assembly shall by law create.

Amend by striking out on line 2 the words [such other], by inserting on line 2 after the word "districts" the words *and such other civil divisions for the purpose of local government*, and inserting on line 3 after the word "assembly" the words *has or may*, so that the section will read:

The municipalities of this commonwealth are counties, townships, cities, boroughs, school districts, incorporated districts, *and such other civil divisions for the purpose of local government* as the general assembly *has or may* by law create.

Mr. ENGLISH. Mr. Chairman: I move the adoption of that amendment.

Mr. McCORMICK. Mr. Chairman: I second the motion.

The motion was agreed to.

The secretary read the amendment submitted in writing by A. Leo Weil, Esq., representing the Voters League, Pittsburgh, Pa., as follows:

Amend by inserting after the word "other" on line 2 the words *metropolitan or*.

The CHAIRMAN. It is the understanding of the chair that the effect of that is to drop Mr. Weil's suggested amendment, which is

covered by what we have just done. Should "poor districts" be incorporated, is the thought in the next amendment suggested? This amendment will therefore be dropped.

Mr. FISHER. It covers that.

The CHAIRMAN. Then it also will be dropped.

The secretary read the amendment submitted by the secretary, as follows:

Amend by inserting on line 2 after the word "boroughs" the words *poor districts.*

This amendment was not called up.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVIII-A, SECTION 1-A (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 1-A of article XVIII-A.

The secretary read the proposed new section submitted in writing by F. P. Schoonmaker, city solicitor, Bradford, Pa., on behalf of the League of Third Class Cities, as follows:

Section 1-A. (New).

For purposes of legislation the general assembly may classify municipalities according to population; but counties, cities or school districts shall not be divided into more than seven classes, and boroughs and townships into more than five classes. The general asembly may also enact laws for the organization and government of municipalities, or any class thereof, to become effective in any municipality only when submitted to the electors thereof and approved by a majority of those voting thereon; and such laws shall not be deemed local or special laws. The general assembly may also enact laws granting to cities generally or to cities of any particular class the right and power to frame and adopt their own charters and to exercise the powers of local self-government, subject, however, to such restrictions, limitations and regulations as the general assembly may impose; and such laws shall not be deemed local or special laws.

Mr. ENGLISH. Mr. Chairman: I offer as a substitute for section 1-A an amendment which I have sent to the desk, and which probably has been placed in the hands of the members of the commission, which reads as follows: "The general assembly may delegate to all cities, or to all the cities of a particular class, authority to frame, adopt and amend charters for the organization and government of such cities, and amend charters for the organization and government of such cities, subect to whatever limitations and restrictions may be imposed by law." I move the adoption of this as a substitute.

Mr. PEPPER. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the substitute?

Mr. FISHER. Mr. Chairman: That will serve as a substitute for a good many propositions that are in the record, if it is agreed to.

Mr. ENGLISH. Unless there is some opposition to it, I do not care to take the time of the commission at this hour in discussing it. I think the section speaks for itself and confers the very minimum of power that public sentiment will be satisfied with.

On the question recurring,

Will the committee agree to the substitute?

It was agreed to.

ARTICLE XVIII-A, SECTION 1-B (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 1-B of article XVIII-A.

The secretary read the proposed new section submitted in writing by F. P. Schoonmaker, Esq., city solicitor, Bradford, Pa., on behalf of the League of Third Class Cities, as follows:

Section 1-B. (New).

All citites and boroughs shall have the power of local government and corporate action adequate for all municipal purposes, and no such power shall be presumed to be denied by reason of not being specified in any existing law.

The CHAIRMAN. It is the understanding of the chair that this suggested amendment drops because of the adoption of the proceding amendment.

ARTICLE XVIII-A, SECTION 1-C (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 1 of article XVIII-C.

The secretary read the proposed new section submitted by Mr. John A. Voll, Commissioner, as follows:

Section 1-C. (New).

The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action: such powers shall be exercised in the manner provided by law.

The CHAIRMAN. This amendment will be dropped because that will be within the powers of the charters which will be granted.

ARTICLE XVIII-A, SECTION 2.

The committee of the whole proceeded to the consideration of section 2 of article XVIII-A and suggested amendment.

The secretary read the section and amendment submitted in writing by Hon. Alexander Simpson, Jr., of Philadelphia, Pa., as follows:

Section 2. Creation of Boundaries.

1 The general assembly may provide for the creation, division and change of
2 boundaries of municipalities.

Amend by inserting on line 1 after the word "provide" the words *by general law only.*

Mr. ENGLISH. Mr. Chairman: It seems to me for the sake of clearness that that amendment may very well be agreed to, and I move that it be adopted.

Mr. FOX. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVIII-A, SECTION 2-A (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 2-A of article XVIII-A.

The secretary read the proposed new section suggested in writing by W. Clyde Grubb, Esq., of Pittsburgh, Pa., as follows:

Section 2-A. (New).

Suits may be brought against a municipality to recover damages for injury resulting from the negligent construction or operation of municipal property.

This amendment was not called up.

ARTICLE XVIII-A, SECTION 2-B (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 2-B of article XVIII-A.

The secretary read the proposed new section submitted by Samuel B. Scott, Esq., of Philadelphia, Pa., at public hearings April 7, 1920, as follows:

Section 2-B. (New).

The general assembly may delegate to the municipalities power to create, change and regulate their own organization and to regulate their own affairs.

The CHAIRMAN. It is the understanding of the chair that this is covered by the amendment just adopted proposed by Mr. English, and it will be dropped.

ARTICLE XVIII-A, SECTION 2-C (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 2-C of article XVIII-A.

The secretary read the proposed new section submitted in writing by the Allied Boards of Trade of Allegheny County, Pittsburgh, Pa., as follows:

Section 2-C (New).

The general assembly shall have power to fix the totality of functions of municipalities and from time to time to alter, enlarge or limit such totality of functions; but the general assembly shall have no power to regulate the methods or means by which any city containing over one hundred thousand inhabitants, as determined by the last Federal census, shall exercise such totality of functions.

At the first November election after the promulgation of this constitution, each city containing more than one hundred thousand inhabitants, determined as aforesaid, shall hold an election to approve or disapprove of a city charter to be proposed by a commission appointed by the mayor and council, which charter shall define the officers amongst whom such totality of functions shall be distributed, the title, method of election or selection, terms of office and compensation of such officers, and all terms, conditions and limitations upon which any or all of such functions may be exercised. Such election shall be by ballot and the will of the majority of the registered electors shall determine the approval or disapproval of such charter, and if such charter shall be approved the same shall go into effect on the first day of April then next ensuing.

Every municipality except such cities as may be authorized by law to create similar distribution of powers by vote of a majority of the electors therein.

The CHAIRMAN. This amendment is also covered by the amendment of Mr. English, and will be dropped.

ARTICLE XVIII-A, SECTION 3.

The committee of the whole proceeded to the consideration of section 3 of article XVIII-A and suggested amendments.

The secretary read the section and amendments submitted in writing by H. K. Siebeneck, Esq., of Pittsburgh, Pa., and also by the Civic Club of Allegheny County, Pittsburgh, Pa., as follows:

Section 3. New Counties.

1 No new county shall be established which shall reduce any county to less than
2 four hundred square miles, or to less than twenty thousand inhabitants, nor

3 shall any county be formed of less area or containing a less population, nor shall
4 any line thereof pass within ten miles of the county seat of any county proposed
5 to be divided.

Amend by substituting the following:

No new county shall be established which shall reduce any county to less than fifty thousand inhabitants, nor shall any county be formed containing a less population.

The CHAIRMAN. Was not that acted on at another place?

Mr. FISHER. Mr. Chairman: It was out of place on the calendar.

The CHAIRMAN. Did we act on it?

Mr. FISHER. Mr. Chairman: We did not act on it.

The CHAIRMAN. The secretary informs me that we did act on it. It was out of place.

Mr. REED. What did we do with it?

The CHAIRMAN. We dropped it.

The secretary read the amendment submitted in writing by Dr. Francis N. Thorpe Commissioner, as follows:

Amend by striking out the word [four] on line 2 and inserting in lieu thereof the word three, and by striking out on line 2, the word [twenty] and inserting therefor the word *fifty*.

Mr. THORPE. Mr. Chairman: Before considering that, before making any motion, I wish to say that it is the request sent in by the Cambria people and the Johnstown Board of Trade, to make a subdivision of the county, and it was put in here out of respect to them. I said I would bring up the question whether the dimensions or area of a county should be diminished by the authority of the constitution. I find in looking over the state constitution that four hundred square miles is given to them as a limit of area. The question is whether a county should be measured by its people or measured by its area, or by both. I move this, Mr. Chairman, to bring it before the commission, as I feel I ought to out of respect to the board of trade.

Mr. PEPPER. I second the motion.

The motion was not agreed to.

The secretary read the amendment submitted by Lawrence H. Rupp, of Allentown, Pa., at public hearings April 30, 1920, as follows:

Amend to read as follows:

New counties may be created by act of the legislature, but no new county shall be created which shall reduce any county to less than three hundred square miles or to less than fifty thousand inhabitants, nor shall any county be formed of less area or containing a less population, nor shall any line thereof pass within ten miles of the present boundary line of the county seat of any county proposed to be divided, but any act of the legislature creating a new county shall be subject to ratification by at least a majority of the electors resident within the proposed boundaries of such new county.

Mr. KELLY. Mr. Chairman: I move the adoption of this amendment.

Mr. McCORMICK. Mr. Chairman: I second the motion.

The motion was agreed to.

The secretary read the amendment submitted in writing by J. W. Ziegler, Esq., of Philadelphia, Pa., as follows:

Amend by adding at the end thereof the following:

The general assembly, however, may pass general laws permitting two or more boroughs or townships or boroughs and townships to combine to form a new borough, township or city by vote of a majority of the electors residing in the whole area affected by the proposed consolidation.

Mr. PEPPER. Mr. Chairman: Before we pass that I would like to inquire of you, sir, or through you of any member of the commission who can enlighten me, whether there is not some element of value in the proviso or exception suggested by Mr. Zeigler. In the concluding words of the section that we just adopted it is necessary that a majority of the electors in a diminished area shall be favorable to what is proposed. It naturally has occurred to Mr. Zeigler that this is one of those cases in which a small legal majority may be a very small minority of the whole number of people who are affected by the proposal, and if the proposal is to form a borough or township or city, it should seem that that proposal might well be regarded as carried if a majority of all those affected were in favor of it. So that it seems to me that there is a good deal to be said. I have not made a special study of the point, and therefore I do not want to take the time if anyone has a rooted objection to the proposal; otherwise I should think it would be well to adopt it.

Mr. FISHER. Mr. Chairman: This is in effect the same proposition we have discussed before and decided against. The effect would be that the larger municipality would, of course, dominate the situation and the smaller would be denied, practically, although ostensibly given, a voice. Mr. Alter had this matter before the committee and opposed the proposition most strenuously, and it was lost.

The CHAIRMAN. That is what the Borough League protested against, because small boroughs around Pittsburgh could be incorporated against their protest.

The chair hears no motion to adopt this amendment, and it will be dropped.

The secretary read the amendment submitted in writing by the Johnstown Chamber of Commerce, Johnstown, Pa., as follows:

Amend by substituting therefor the following:

No new county shall be established which shall reduce any county to less than fifty thousand inhabitants, nor shall any county be formed containing a less population.

This amendment was not called up.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVIII-A, SECTION 4.

The committee of the whole proceeded to the consideration of section 4 of article XVIII-A and suggested amendments.

The secretary read the amendment submitted in writing by T. F. Chrostwaite, president, Pennsylvania State Association of Boroughs, as follows:

Section 4. Cities and Boroughs.—Creation and Change of Boundaries.

1 No city or borough shall be created, nor shall the boundaries thereof be
2 changed except by the consent of at least a majority of such electors resident
3 within the proposed boundaries, including a majority of such electors resident
4 within the proposed added area, as shall vote on the proposed change at an
5 election which shall be held as may be provided by law; nor shall any change
6 in boundaries be made which shall place outside the existing limits of a city
7 or borough any part thereof without the consent of at least a majority of such
8 electors resident within the proposed excluded area as shall vote.

Amend by inserting a comma after "changed" in second line for clearness.

The CHAIRMAN. I do not think we want to go into the matter of commas, and the first amendment will be dropped. That will be a matter for the committee on style I imagine.

The secretary read the amendment submitted in writing by T. F. Chrostwaite, president, Pennsylvania State Association of Boroughs, Hanover, Pa., at public hearings April 7, 1920, as follows:

Amended further by striking out this section or substituting therefor the following:

Municipalities shall be created, abolished and their boundaries changed in a manner fixed by the legislature.

Mr. ENGLISH. Mr. Chairman: I do not wish to call up the amendment. It seems to me that this question was quite thoroughly discussed at the time the section was adopted. The question is the extent to which the taxable inhabitants of the particular political subdivision may or may not be obliged to join with some other subdivision. It is pretty much the same question referred to a moment ago by Senator Fisher. As I understand it, the proposed amendment would take away from the residents of the municipality all discretion in the matter and leave it entirely to the legislature to fix it by act of assembly. It seems to me the section as adopted in the tentative draft is right.

The CHAIRMAN. That covers the proposition in all those amendments on page 92. You do not move any amendment, as I understand.

Mr. ENGLISH. No, sir.

The CHAIRMAN. These are all covered by the action on the tentative draft, and unless there is objection all the suggested amendments on page 92 will be dropped. The same happens with reference to the amendment suggested by Mr. Weil at the top of page 93. That also will be dropped. It is the understanding of the chair that the amendment offered by Mr. English, which we adopted, leads to the dropping of the next suggested amendment by Mr. Weil, because Mr. English's amendment covers that.

The secretary read the amendment suggested in writing by G. W. Williams, Esq., of Pittsburgh, Pa., and by the Peoples Association of Pennsylvania, as follows:

Amend by striking out on lines 3 and 4 the words [including a majority of such electors resident within the proposed added area].

This amendment was not called up.

The secretary read the amendment submitted by Andrew Wright Crawford, field secretary, American Civic Association, Philadelphia, Pa., as follows:

Amend by striking out on lines 3, 4 and 5 the words [including a majority of such electors resident within the proposed added area as shall vote on the proposed change at an election which shall be held as may be provided by law], and on the last line the words [as shall vote].

This amendment was not called up.

The secretary read the amendment submitted in writing by the Pittsburgh Real Estate Board, Pittsburgh, Pa.; Chamber of Commerce, Committee on Charter Revision, Pittsburgh, Pa., Allentown Chamber of Commerce, Allentown, Pa.; Bethlehem Chamber of Commerce, Bethlehem, Pa., Pottsville Chamber of Commerce, Pottsville, Pa,; Wilkes-Barre Chamber of Commerce, Wilkes-Barre, Pa.; Carbondale Chamber of Commerce, Carbondale, Pa,; Hon. M. W. Gross,

mayor of the city of Allentown, Pa., and the Lebanon Chamber of Commerce, Lebanon, Pa., as follows:

Strike out.

This amendment was not called up.

The secretary read the amendment submitted in writing by A. Leo Weil, Esq., representing the Voters League, Pittsburgh, Pa., as follows.

Amend by inserting, after the word "law" on line 5 a period and the following words: "*No city or borough shall be included in such city or boundaries unless a majority of electors of such city or borough proposed to be included, who shall vote on the proposed inclusion at an election which shall be held as may be provided by law, vote for said inclusion.*

This amendment was not called up.

ARTICLE XVIII-A, SECTION 4-A (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 4-A of article XVIII-A.

The secretary read the proposed new section, submitted in writing, by A. Leo Weil, Esq., representing the Voters League, Pittsburgh, Pa., as follows:

Section 4-A (New). Charters for Local Self-Government.

Any city may form a charter for its own government consistent with and subject to this constitution, and from time to time may change and amend the same. When so adopted such charter shall be submitted to the legislature at the regular session next following such adoption and shall be approved or rejected without power of alteration. It shall be competent in any charter so framed to provide that the municipality to be governed thereunder may make and enforce all laws and regulations in respect to its local and municipal affairs, subject only to the restrictions and limitations provided by this constitution and the general laws of this commonwealth, excepting those general laws which may have been or shall be passed regulating the local or municipal affairs of those municipalities which have not or may not adopt such a charter. The general assembly may provide for the manner in which such cities shall proceed in the adoption or amendment of such charters, but no such charter shall be adopted without having first received the vote of approval of a majority of the electors resident in said city who shall vote upon the approval of said charter at the election provided by law for the adoption of the same.

This amendment was not called up.

ARTICLE XVIII-A, SECTION 4-B (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 4-B of article XVIII-A.

The secretary read the proposed new section submitted in writing by the council of the city of Meadville, Pa., as follows:

Section 4-B. (New).

Cities and boroughs shall have the right to attach conditions to franchise grants, which conditions shall not, without the consent of the governing body of the city or borough, be thereafter altered or modified by the state or any administrative agency thereof.

This amendment was not called up.

ARTICLE XVIII-A, SECTION 4-C (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 4-C of article XVIII-A.

The secretary read the proposed new section submitted in writing by James A. Gardner, Esq., city solicitor, New Castle, Pa., as follows:

Section 4-C. (New).

Cities may be chartered when a majority of the electors of any town or borough having a population of at least ten thousand shall vote at any general or municipal election in favor of the same; and the legislature shall have the power to classify

cities according to population; provided, however, that the said classification shall not exceed seven classes. All laws passed relating to each class, and all laws relating to and regulating procedure and proceedings in court with reference to any class shall be deemed general legislation within the meaning of this constitution. The legislature may also give to cities, or to cities of any particular class the right and power to frame and adopt their own charters and to exercise the powers and authority of local self-government, subject, however, to such restrictions, limitations and regulations, as may be imposed by the legislature. Laws may also be enacted affecting the organization and government of cities which shall become effective in any city only when submitted to the electors and approved by a majority of those voting thereon.

The CHAIRMAN. It is the understanding of the chair that this is covered by Mr. English's amendment, and it will therefore be dropped.

ARTICLE XVIII-A, SECTION 4-D (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 4-D of article XVIII-A.

The secretary read the proposed new section submitted in writing by the Pittsburgh Chamber of Commerce, Pittsburgh, Pa., as follows:

Section 4-D. (New).

The legislature may define the powers of cities and constitute a general form of government for such corporations, resting the exercise of such powers in the elective, legislative and executive officers provided in such form of government, and may fix the salaries and terms of office required by such general form of government. Excepting as above provided, however, it shall have no power to enact legislation affecting the exercise of such powers so granted to cities. Such powers so vested shall be exercised by said corporation through such agencies and in such manner as it shall see fit.

Every city may exercise such powers as it may deem necessary for its general welfare, excepting as limited by this constitution and such restrictions as the legislature may from time to time enact.

This amendment was not called up.

ARTICLE XVIII-A, SECTION 5.

The committee of the whole proceeded to the consideration of section 5 of article XVIII-A and suggested amendments.

The secretary read the section and amendment submitted in writing by W. M. Jacoby, executive secretary, Flood Commission of Pittsburgh, Pittsburgh, Pa., at public hearings April 6, 1920, as follows:

Section 5. Incorporated Districts.

1 The general assembly, in order to facilitate public works for the benefit of two
2 or more municipalities, may provide for the creation of classes of incorporated
3 districts which may extend over more than one municipality and may vest in
4 such incorporated district one or more of the powers vested by law in the
5 municipalities within their respective boundaries and additional powers, and
6 may make any power so vested an exclusive power or a power concurrent with
7 the municipalities wholly or partly within their respective boundaries. No
8 such incorporated district shall be created or its boundaries extended or its pow-
9 ers increased except by the consent of at least a majority of such electors resi-
10 dent within the proposed boundaries of the incorporated district as shall vote
11 on the question at an election which shall be held as may be provided by law.
12 No incorporated district shall be created entirely within the boundaries of a
13 city or borough.

Amended by striking out all after the word "municipality" on line 3 to the end of the sentence and insert in lieu thereof the words *and may define the powers of such incorporated district.*

This amendment was not called up.

The secretary read the amendment submitted in writing by Andrew Wright Crawford, field secretary, American Civic Association, Philadelphia, Pa., as follows:

Amend by striking out on lines 1 and 2 the words [in order to facilitate public works for the benefit of two or more municipalities].

Or, amend by striking out on line 1 the word [works] and substituting therefor the word *improvements*.

This amendment was not called up.

The secretary read the amendment submitted in writing by J. T. Miller, secretary, League of Boroughs and Townships of Allegheny County, Wilkinsburg, Pa., at public hearings, April 7, 1920, as follows:

Amend to read as follows:

The general assembly, in order to facilitate public works for the benefit of two or more municipalities, may provide for the creation of classes of incorporated districts which may extend over more than one municipality and may vest in such incorporated district one or more of the powers [vested by law] *already exercised by* [in] the municipalities within their respective boundaries [and additional powers] and may make any power so vested an exclusive power or a power concurrent with the municipalities wholly or partly within their respective boundaries; *provided, that* no such incorporated district shall be created or its boundaries extended or its powers increased except by the consent of at least a majority of electors resident within *each of the several municipalities* within the proposed boundaries of the incorporated district as shall vote on the question at an election which shall be held as may be provided by law; *provided further*, that no incorporated district shall be created entirely within the boundaries of a city or borough; *and provided further, that any municipality voting against becoming a part of said proposed incorporated district shall be excluded therefrom.*

Mr. REED. Mr. Chairman: There were a couple of men here from Pittsburgh the other day, I think they saw Senator Fisher too, objecting very strongly to that, and it possibly ought to be considered for a minute. Is not that right, Senator Fisher, is not that the one they talked about?

Mr. FISHER. Yes, Mr. Chairman, it was the section under consideration, section 5 of this article. They were representatives of the boroughs which are organized in Allegheny county. They are quite a number of municipalities which have formed an organization, and they registered their very strong objection to the provisions of this general section which enables the formation of new municipalities. This whole subject was debated before. Their theory is that the incorporated ditricts can by mutual agreement or contract work out the problems without having a new corporate framework set down on top of them. It is the same old subject we have had before us.

Mr. PEPPER. Mr. Chairman: If it is in order, I move you, sir, the adoption as a substitute for the section as it stands in the tentative draft of the matter appearing in italics at the foot of page 96 and the top of page 97. If this is seconded I will make a brief explanation.

Mr. REED. Mr. Chairman: I second the motion.

The secretary read the substitute as follows:

Subject to the provisions of general laws, any municipality may contract with any other municipality or municipalities for the acquisition by purchase, construction or otherwise, or for the maintenance, supervision or operation of public works, utilities, improvements or other property in which they have or plan to have a joint interest. Such contracts may provide for the creation of boards, commissions or other agencies to effect any or all of the purposes of such contracts; but no such board, commission or agency shall ever have power to levy taxes or to borrow money. All such contracts shall provide for the arbitration of any differences that may arise between the parties thereof; and, unless such contracts are for a period of ten years or less, they shall provide for terminating the same upon not more than ten years' notice by any party thereto.

On the question,

Will the committee agree to the substitute:

Mr. PEPPER. Mr. Chairman: This form is suggested by the gentlemen of the Bureau of Municipal Research as a substitute which obviates the clause referred to by Senator Fisher a moment ago. It legalizes or authorizes a system of voluntary contracts between the municipalities concerned, which seems to cover all that is desired of them in the section already under review and avoids the disadvantages that would result if you were to multiply taxing districts and agencies with debt-contracting power. It seems to me to be admirably drawn and places us under additional obligation to those gentlemen who have already made a number of valuable suggestions.

Mr. FISHER. Mr. Chairman: May I ask Mr. Pepper whether or not he considers it a wise provision to include the last two lines of the proposed amendment, which read "they shall provide for terminating the same upon not more than ten years' notice by any party thereto?" I was wondering whether or not that might lead to difficulties. Suppose the idea was to provide a joint system of sewage, would there be any danger that the system might be destroyed or injured by the withdrawal of the contracting parties? Would it be better to cut that out and let it be a subject dealt with in the contract which they may form?

Mr. McCORMICK. Mr. Chairman: Do not municipalities have this power today?

The CHAIRMAN. That I can answer because I happen to be solicitor of two municipalities and have considered it. It is rather close, and I would feel safer in drawing my contracts if I knew there was constitutional warrant for that than just drawing them out of the clear sky. I think that will hold water.

Mr. FISHER. Mr. Chairman: I move to amend by striking out the words I have just read, beginning at the bottom of page 96. "and, unless such contracts are for a period of ten years or less, they shall provide for terminating the same upon not more than ten years' notice by any party thereto."

Mr. REED. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question recurring,

Will the committee agree to the substitute as amended?

It was agreed to.

The CHAIRMAN. That will be a substitute for section 5, and it is the understanding of the chair that all of the suggested amendments on pages 95 and 96 are dropped, because they relate to the section that has just been stricken out.

The secretary read the amendment submitted in writing by A. Leo Weil, Esq., representing the Voters League, Pittsburgh, Pa., as follows:

Amend to read as follows:

The general assembly, in order to facilitate public works for the benefit of two or more municipalities, may provide for the creation of [classes of] incorporated *or metropolitan districts* which may [extend over] *be organized by including therein* more than one municipality, *or parts thereof,* and may vest in such incorporated *or metropolitan* district one or more of the powers vested by law in the municipalities within their respective boundaries, [and] *as well as* additional powers, and may make any power so vested [an] *wholly or partly* exclusive or [a power] concurrent with the [municipalities] *municipality* [wholly or partly] *so included* within their respective boundaries. No such incorporated *or metropolitan* district shall be

created, or its boundaries extended, or its powers increased, except by the consent of at least a majority of such electors resident within the proposed boundaries of the incorporated *or metropolitan* district as shall vote on the question at an election which shall be held as may be provided by law, *upon the creation of such incorporated or metropolitan district, nor shall any municipality be included in such district except with the consent of a majority of the electors resident in said municipality as shall vote on the question at an election which shall be held as may be provided by law upon the creation of such incorporated or metropolitan district.* No [incorporated] such district shall be created entirely within the boundaries of a city or borough. *The general assembly may provide for the holding of such elections and also for what powers are to be vested in the metropolitan or incorporated district and for the exercise of such powers so vested and for the retention and exercise of the powers in connection with local affairs and local improvements not so vested in such incorporated or metropolitan district and for the local officers and boards to exercise and administer the powers so retained by the constituents of and not vested in such metropolitan or incorporated district.*

This amendment was not called up.

The secretary read the amendment submitted in writing by the Bureau of Municipal Research of Philadelphia as follows:

Substitute the following:

Subject to the provisions of general laws, any municipality may contract with any other municipality or municipalities for the acquisition by purchase, construction or otherwise, or for the maintenance, supervision or operation of public works, utilities, improvements or other property in which they have or plan to have a joint interest. Such contracts may provide for the creation of boards, commissions or other agencies to effect any or all of the purposes of such contracts; but no such board, commission or agency shall ever have power to levy taxes or borrow money. All such contracts shall provide for the arbitration of any differences that may arise between the parties thereto; and, unless such contracts are for a period of ten years or less, they shall provide for termination the same upon not more than ten years' notice by any party thereto.

The CHAIRMAN. This amendment was submitted for a previous amendment, and no further action on it is necessary.

ARTICLE XVIII-A, SECTION 5-A (NEW).

The committee on the whole proceeded to the consideration of the proposed new section 5-A of article XVIII-A.

The secretary read the proposed new section submitted in writing by W. J. Fitzgerald, Esq., of Scranton, Pa., as follows:

Section 5-A. (New).

All municipalities except townships shall file, in a form and manner to be provided by law, for public information, uniform accounts.

This amendment was not called up.

ARTICLE XVIII-A, SECTION 6.

The committee of the whole proceeded to the consideration of section 6 of article XVIII-A and suggested amendments.

The secretary read the section and amendment submitted by the Civic Club of Allegheny County, Pittsburgh, Pa., as follows:

Section 6. Special Commissions Prohibited.

1 The general assembly shall not delegate to any special commission, private
2 corporation or association, any power to make, supervise or interfere with any
3 municipal improvements, money, property or effects, whether held in trust or
4 otherwise, or to levy taxes or perform any municipal function whatever.

Amend by adding at the end thereof the following:

But said provision shall not apply to any commission whose members are appointed and removable by an officer or agency of the municipality as may be provided by law.

This amendment was not called up

The secretary read the amendment submitted in writing by H. K. Siebeneck, Esq., of Pittsburg, Pa., as follows.

Amend by adding at the end thereof the following:

But said provision shall not apply to any commission subject to the control of ordinary municipal authorities.

Mr. REED. Mr. Chairman: That seems to excite some attention. There are three suggestions made. It seems to me if we insert any of these provisions and then give to a commission which may be subject to control of the municipal authorities or appointed by them the power "to levy taxes and perform any municipal function," that is too broad.

The CHAIRMAN. In a recent case which I argued the supreme court said that it applied only to special commissions.

There being no motion to adopt this amendment, it will be dropped.

The secretary read the amendment submitted in writing by Andrew Wright Crawford, secretary, American Civic Association, Philadelphia, Pa., as follows:

Amend by inserting after the word "commission" on line 1 the words *to be appointed by a state official or by the legislature, or to any private corporations or association, any power to make.*

This amendment was not called up.

ARTICLE XVIII-A, SECTION 7.

The committee of the whole proceeded to the consideration of section 7 of article XVIII-A and suggested amendments.

The secretary read the section and amendment submitted in writing by G. W. Williams, Esq., of Pittsburgh, Pa., as follows:

Section 7. Election.—Appointments of County Officers.

1 County commissioners, sheriffs and treasurers shall be elected. All other
2 municipal officers shall be elected or appointed by an officer or agency of the
3 municipality as may be provided by law.

Strike out the word [municipal] and substitute therefor the word *county.*

Mr. ENGLISH. It occurs to me, Mr. Chairman, that this is rather a criticism of form except for this. Are there not certain county officers, and who, under the definition of this section, are municipal officers, and who ought to be elected, and whose right to be elected should be guaranteed by the constitution? It seems to me this amendment ought not to prevail because it would put it entirely up to the legislature to provide for the appointment of county commissioners, sheriffs, county treasurers or any other county officer. This section as adopted in the tentative draft provides that "County commissioners, sheriffs and treasurers shall be elected."

Mr. FISHER. Mr. Chairman: It seems to me that the suggestion is due to the fact that the provision applies to county officers. We use the term "municipal officers," when we refer to what should be designated as "county officers," and I think the suggestion is entirely proper. While it may be a question of style, I think it well to consider it.

I therefore move the adoption of this amendment.

Mr. THORPE. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. PEPPER. Mr. Chairman: May I ask whether it is not a mere matter of form or style? First there is an affirmative provision that certain officers should be elected, and they are county officers. Then there is an option for election or appointing all municipal officers who are not county officers, and all county officers not of the class designated. In other words, this is an effort to prescribe election for some and not for all county officers, leaving it optional as to whether county officers not designated and municipal officers who are not county officers shall be elected or appointed. Is there not a difference there that is worth considering?

Mr. ENGLISH. Mr. Chairman: I hope this amendment proposed by Mr. Williams will not prevail. The primary purpose of this section was to secure for the residents of municipalities or their properly elected representatives the right to appoint or to the people themselves to elect all municipal officers so as to make it constitutionally impossible for the general assembly to authorize the governor or some functionary outside of the municipality to appoint officers who are entrusted with the administration of the municipal business. Now then, if you substitute for the word "municipal" the word "county" it entirely destroys the purpose of the section, as I see it.

Mr. PEPPER. Substitute municipal for county?

Mr. ENGLISH. No. This will take out the word "municipal" and put in "county," and you destroy the purpose of the section.

Mr. FISHER. Mr. Chairman: With the consent of the seconder I will withdraw the motion.

Mr. THORPE. Mr. Chairman: I withdraw by second.

The CHAIRMAN. The chair hears no motion to adopt this amendment, and it will be dropped.

Mr. FISHER. Mr. Chairman: It seems to me that there is confusion presented by the words in confounding county officers with municipal officers, and I believe it would be clarified by inserting after the word "other" and before the word "municipality" the words "county and" so as to read "All other county and municipal officers," and so on. I offer that as an amendment to this section.

Mr. REED. Mr. Chairman: I second the motion.

The motion was agreed to.

The secretary read the amendment submitted by telegram by the Reading Chamber of Commerce, Stanley Bright, president, as follows:

Amend to read as follows:

Municipal officers shall be elected or appointed by an officer or agency of a municipality as may be provided by law.

This amendment was not called up.

The secretary read the amendment submitted by H. W. Dodds, Esq., representing the Peoples Association of Pennsylvania at public hearings April 14, 1920, as follows:

Amend by striking out on line 1 the word [treasurer] and inserting in lieu thereof the word *auditors.*

Mr. ENGLISH. Mr. Chairman: No doubt Mr. Dodd's argument on this proposition was not understood, and it is only fair to state his position, as I understand it, that the county auditors ought to be elected, but the county treasurer need not be, in order to preserve the purpose of the section in the constitution, and that the audi-

tors, because of the functions they are intended to perform, should be independent of any appointing power in the county, but that the treasurers need not be.

The CHAIRMAN. There is a further amendment farther down providing that county controllers and auditors shall be elected.

There being no motion to adopt this suggested amendment, it will be dropped.

The secretary read the amendment submitted in writing by the Chamber of Commerce, Committee on Charter Revision, Pittsburgh, Pa., as follows:

Amend by striking out all after the word "and" on line 1 and inserting the following words: *county controller or auditors shall be elected.*

Mr. PEPPER. I move the adoption of this amendment. It is the same in substance as the one submitted by Mr. Weil on behalf of the Voters League, and might apply to municipalities on the theory submitted by Mr. English.

Mr. REED. Mr. Chairman: I second the motion.

The motion was agreed to.

The secretary read the amendment submitted in writing by H. W. Dodds Esq., representing the National Municipal League, also by H. Robert Mays, Esq., district attorney, Reading, Pa., as follows:

Strike out.

This amendment was not called up.

The secretary read the amendment submitted in writing by A. Leo Weil, Esq., representing the Voters League, Pittsburgh, Pa., as follows:

Amend the first sentence to read as follows: county commissioners, [and] sheriffs *and auditors or controllers* shall be elected.

This amendment was not called up.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVIII-A, SECTION 8.

The committee of the whole proceeded to the consideration of section 8 of article XVIII-A and suggested amendments.

The secretary read the section and amendment submitted in writing by T. F. Chrostwaite, president, Pennsylvania State Association of Boroughs, Hanover, Pa., at public hearings, April 7, 1920 as follows:

Section 8. Residence of County Officers.

1 No person shall be appointed to any office within any county who shall not
2 have been a citizen and inhabitant therein one year next before his appointment.
3 if the county shall have been so long erected, but if it shall not have been so
4 long erected, then within the limits of the county or counties out of which it
5 shall have been taken.

Amend by inserting the word *county* between the words "any" and "office" in the first line.

Mr. ENGLISH. I move the adoption of this amendment.

Mr. REED. Mr. Chairman: I second the motion.

The motion was agreed to.

The secretary read the amendment submitted in writing by H. D. Dodds, secretary, National Municipal League, as follows:

Amend by striking out on line 1 the word [appointed] and substituting therefor the word *elected*.

Mr. McCORMICK. Mr. Chairman: May I open up this question again? Some of these counties might not have a competent engineer. There are, however, men in some of our counties, men qualified to act as such, and you could not appoint that character of man until he had one year's residence in that county. Is not this going a little far?

The CHAIRMAN. If he would be a county engineer he is elected, but if he is not elected they can appoint an engineer to do a particular work.

Mr. McCORMICK. From anywhere?

The CHAIRMAN. I should think so. He is not an officer, this only applies to officers.

Mr. McCORMICK. Mr. Chairman: Suppose the state would want to create some health officer and create in the county some office requiring technical knowledge of sanitation, requiring a man of certain training. I am just raising that point as to whether a situation of that kind might not occur.

Mr. ENGLISH. Mr. Chairman: I think there is some force in Mr. Mc Cormick's suggestion, and the situation may very well be met by substituting the word "elected" instead of the word "appointed."

The CHAIRMAN. This is the amendment suggested by Mr. Dodds.

Mr. ENGLISH. Mr. Chairman: That is true. I move that the amendment be adopted.

Mr. REED. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. FISHER. Mr. Chairman: Is there not presented an element of danger? Now, we are here providing for the election of only three or four of the county officers, and all other officers may be appointed. If they are appointed and this amendment prevails anybody from outside the country can fill the offices that are not elective. I can see that there is some merit in what Mr. McCormick says. Is it not better that we should place limitations, leaving the limit in as to the residence for one year?

Mr. ENGLISH. It seems to me, Mr. Chairman, as long as officers who do the appointing are elected, and are therefore answerable to the people for the appointments that they make, there is not very much danger of abuse if they are given the power when necessity requires them to go outside of the county to appoint their subordinates.

There may be considerable embarrassment result from the necessity of having all appointees residents of the county for a year prior to the time when they can undertake the discharge of their public duties. There have been counties in the state no doubt where it is not always possible to get the right kind of men to do particular work. It would seem to me that there is very little danger of abuse and some merit in making the change.

Mr. McCORMICK. Do you know, Mr. English, why this amendment was put in at all?

Mr. ENGLISH. It was taken from the old constitution, Mr. McCormick; it was taken from the constitution of 1873.

On the question recurring,

Will the committee agree to the motion?

It was agreed to.

The secretary read the amendment submitted by telegram by the Reading Chamber of Commerce, Stanley Bright, president, as follows:

Strike out.

Mr. McCORMICK. Mr. Chairman: The recommendation of the Reading Chamber of Commerce is to strike out the entire section, is it not? I do not see the reason for it.

The CHAIRMAN. Where will the records be kept if not in the county town?

Mr. McCORMICK. Mr. Chairman: I am still talking about section 8.

The CHAIRMAN. We have passed that. I beg your pardon, your motion is to strike out the entire section 8.

Mr. McCORMICK. Mr. Chairman: To strike out the entire section. It was submitted by the Reading Chamber of Commerce, and they proposed the amendment to strike out entirely. I thought I could get some explanation of why it is necessary. It was in the old constitution, I understand.

The CHAIRMAN. I do not see why it is necessary.

Mr. McCORMICK. Mr. Chairman: I cannot see why a man should live in the county. Suppose a man lived in Cumberland county across the river, and a man in Harrisburg wanted to get a landscape architect, why should the man from Cumberland county have to come to Harrisburg to live before he could be used in this community? I do not see any reason for it.

Mr. PEPPER. Mr. Chairman: I will second that.

On the question,

Will the committee agree to the motion?

Mr. REED. Mr. Chairman: Does this apply to elective officers or appointive officers?

Mr. McCORMICK. To appointive officers.

The CHAIRMAN. But it strikes out the whole section.

Mr REED. Mr. Chairman: Tnen you would meet Mr. McCormick's suggestion if you would reverse yourself and apply it to elective officers. There is no reason why a man should be appointed from across the river.

The CHAIRMAN. He would not in Pittsburgh.

Mr. REED. Mr. Chairman: I do not want to say what we want in Pittsburgh.

Mr. PEPPER. Mr. Chairman: The matter we have before us is the section which relates to appointive officers?

The CHAIRMAN. Yes.

Mr. PEPPER. And the motion Mr. McCormick made applies only to elective officers?

The CHAIRMAN. That is right. The motion of Mr. McCormick is that this entire section be stricken out.

Mr. FISHER. Mr. Chairman: Mr. McCormick has confused, I think, in his mind "agents" or "employes" with "officers." What he has indicated he has in mind would be merely "employes." For instance, you want a skilled engineer to construct or supervise the construction of bridges. They are employed constantly by the of

ficer, of the county for those special purposes, but they are not officers. Your county treasurer is an officer. The prothonotary is an officer.

The CHAIRMAN. He is not an elective officer, the prothonotary is an official.

Mr. FISHER. Mr. Chairman: They are after all officers. There is a distinction between "officer" and "employe" or "agent." It would seem to me it would be unsafe to throw down the bars and have them import carpetbaggers from the outside to fill offices.

Mr. McCORMICK. Mr. Chairman: My objection is that no person shall be appointed to any office within any county. I do not know five or ten years from now what officers are going to be created by the legislature. That is what I am objecting to, putting it in the constitution. I want to make it free and open. They might appoint an officer in each county to analyze water in each county. It may be a new office, and I do not want to be limited. I think the counties themselves will take care of the carpetbaggers. I do not believe they will elect him. I would make it as free as possible, and let the people decide whether they want the carpetbaggers.

On the question recurring,

Will the committee agree to the motion?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVIII-A. SECTION 9.

The committee of the whole proceeded to the consideration of section 9 of article XVIII-A and suggested amendment.

The secretary read the section and amendment submitted by telegram by the Reading Chamber of Commerce, Stanley Bright, president, as follows:

Section 9. Certain County Officers to Have Offices in County Town.

1 Prothonotaries, clerks of the court, recorders of deeds, registers of wills, county
2 surveyors and sheriffs shall keep their offices in the county town of the county
3 in which they respectively shall be officers.

Strike out.

This amendment was not called up.

ARTICLE XVIII-A, SECTION 11.

The committee of the whole proceeded to the consideration of section 11 of article XVIII-A and suggested amendments.

The secretary read the section and amendment submitted by telegram by the Reading Chamber of Commerce, Stanley Bright, president, as follows:

Section 11. Compensation of County Officers.

1 The compensation of county officers shall be regulated by law, and all fees
2 which county officers may be authorized to receive shall be paid into the treas-
3 ury of the county or state as may be directed by law.
4 All county officers shall be paid only by salary for services performed for the
5 county, state or any political subdivision of either or for any other official
6 service.

Strike out.

This amendment was not called up.

The secretary read the amendment submitted in writing by Hon. Alexander Simpson, Jr., of Philadelphia, as follows:

Amend by inserting on line 2 after the word "fees" the words *or other compensation.*

The CHAIRMAN. The chair recalls that we threshed this all out in the prior debate, and purposely left the words "or other compensation" out, for the reason that we provided in the second paragraph that "All county officers shall be paid only by salary for services performed for the county, state or any political subdivision of either or for any other official service." If we strike this out the state cannot use these persons for the collection of collateral inheritance tax.

Mr. PEPPER. Mr. Chairman: Not only that, but if it is true that compensation shall be regulated by law and fees shall be disposed of, there cannot be such a thing as "other compensation."

The CHAIRMAN. The chair hears no motion to call this last amendment up, and it will be dropped.

The secretary read the amendment submitted in writing by Thomas H. Greer, Esq., of Butler, Pa., as follows:

Amend by striking out on line 2 the words [county officers] and in inserting in lieu thereof the words *officers paid by the county.*

This amendment was not called up.

ARTICLE XVIII-A, SECTION 12 (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 12 of article XVIII-A.

The secretary read the proposed new section submitted in writing by the Johnstown Chamber of Commerce, Johnstown, Pa., as follows:

Section 12. (New).

Insert the section reported by the special committee on municipalities (Report No. 22), reading as follows:

Cities, or cities of any particular class may be given the right and power to frame and adopt their own charters and to exercise the powers and authority of *local self-government, subject, however, to such restrictions, limitations and regulations as may be imposed by the legislature. Laws also may be enacted affecting the organization and government of cities and boroughs, which shall become effective in any city or borough only when submitted to the electors thereof and approved by a majority of those voting thereon.*

The CHAIRMAN. As the chair understands it, this amendment is covered by the amendment proposed by Mr. English, already adopted. Is that correct?

Mr. ENGLISH. Mr. Chairman: Yes, that is my understanding.

The CHAIRMAN. This proposed amendment will therefore be dropped.

ARTICLE XVIII-A, SECTION 13.

The committee of the whole proceeded to the consideration of section 13 of article XVIII-A and suggested amendments.

The secretary read the section and amendment submitted in writing by Hon. Alexander Simpson, Jr., of Philadelphia, as follows:

Section 13. County Officers.

1 County officers shall consist of sheriffs, coroners, prothonotaries, registers of
2 wills, recorders of deeds, commissioners, treasurers, surveyors, auditors or con-

3 trollers, clerks of the courts, district attorneys, and such others as may from
4 time to time be established by law; and no sheriff or treasurer shall be eligible
5 for the term next succeeding the one for which he may be elected.

Amend by striking out on line 1 after the word "coroners" the word [prothonotaries], and on lines 2 and 3 after the word "controllers" the words [clerks of the courts].

This amendment was not called up.

The secretary read the amendment submitted in writing by H. W. Dodds, secretary, National Municipal League, as follows:

Amend by substituting the following section:

Until otherwise provided by law, county officers shall remain as at present established.

This amendment was not called up.

The secretary read the amendment submitted in writing by Hon. R. H. Koch, of Pottsville, Pa., as follows:

Amend by striking out the word "coroners" on line 1.

This amendment was not called up.

The secretary read the amendment submitted by H. W. Dodds, Esq., representing the Peoples' Association of Pennsylvania at public hearings, April 14, 1920, as follows:

Amend by inserting at the beginning of the section the words *Until otherwise provided by law* by striking out on lines 3 and 4 the words [and such others as may from time to time be established by law] and by striking out the last word [elected] and substituting therefor the word *chosen*.

This amendment was not called up.

ARTICLE XVIII-A, SECTION 14.

The committee of the whole proceeded to the consideration of section 14 of article XVIII-A and suggested amendment.

The secretary read the section and amendment submitted by telegram by Reading Chamber of Commerce, Stanley Bright, president, as follows:

Section 14. County Commissioners and County Auditors.

1 Three county commissioners and three county auditors shall be elected in
2 each county where such officers are chosen, in the year one thousand nine hundred
3 and twenty-three, one for two years, and two for four years; and every two
4 years thereafter one and two alternately, for four years; in the election of said
5 officers for a four-year term each qualified voter shall vote for one person; any
6 casual vacancy in the office of county commissioner or county auditor shall be
7 filled by the governor by the appointment of an elector of the proper county
8 who shall have voted for the commissioner or auditor whose place is to be filled.

Strike out.

This amendment was not called up.

ARTICLE XVIII-A, SECTION 14-A (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 14-A of article XVIII-A.

The secretary read the proposed new section submitted by Owen J. Roberts, Esq., of Philadelphia, Pa., representing the mayor's committee, as follows:

Section 14-A. (New).

In Philadelphia county officers and court judges, other than the judges of the common pleas and orphans courts and any other officers whose salaries or expenses are a charge on the treasury of the city, shall annually, on or before the date fixed by law, submit to the chief executive of the city of Philadelphia estimates of the needs of their respective officers and courts. The councils or other body vested by

law with the power of appropriation shall have the same control over appropriations for the support of such offices and courts as over appropriations for the support of a municipal office, except that the general assembly may by law designate the salaries of such officers and judges.

Mr. PEPPER. Mr. Chairman: I think that this section, which is marked 14-A, is merely a preliminary draft which appears in better form as section 14-B. With your permission, sir, I move the adoption of the new section here indicated as section 14-B at the foot of page 101.

The CHAIRMAN. In order to keep the clerk's records straight, section 14-A will be dropped.

ARTICLE XVIII-A, SECTION 14-B (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 14-B of article XVIII-A.

The secretary read the proposed new section submitted in writing by the Bureau of Municipal Research of Philadelphia, as follows:

Section 14-B. (New).

In any county whose boundaries coincide with or lie wholly within the boundaries of any city, all county officers and judges, other than the judges of common pleas and orphans' courts, and all state or county officers whose salaries or expenses are payable, in whole or in part, out of funds receivable by any city or county officer shall submit to the chief executive of the city, in the manner and at the time required of city officers, estimates of the needs of their respective officers and courts. The city council or other body vested by law with the power of appropriation shall have the same control over appropriations for the support of such officers and courts as it has over appropriations for the support of city officers, except that the general assembly may fix the salaries of such officers and judges.

In any such county any or all county offices may be abolished by law and the functions and powers pertaining to any such office may be transferred to any officer or officers of such city.

Mr. PEPPER. Mr. Chairman: This was recommended also by the mayor's committee and is, as I say, a more perfect form of the draft than it appears in 14-A. I move that the amendment be adopted.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE XVIII-A, SECTION 17.

The committee of the whole proceeded to the consideration of section 17 of article XVIII-A and suggested amendments.

The secretary read the section and amendment submitted in writing by T. F. Chrostwaite, president, Pennsylvania State Association of Boroughs, Hanover, Pa., at public hearings April 7, 1920, as follows:

Section 17. Construction of Passenger Railways in Cities, Boroughs and Townships.

1 No street passenger railway shall be constructed within the limits of any
2 city, borough or township without the consent of its local authorities; provided,
3 that nothing in this constituion shall be so construed as to restrict the police
4 power of the state over the operation of public utilities.

Combine with this section sections A-1 and 2-A of article XVII.

Substitute for the words "the state" the word *municipalities*, or add after the words "police power" the words *of municipalities or*, or eliminate the provision entirely. Or else add at the end thereof the following: *and the legislature or such agency or commission as it has created or does create may regulate, change or abolish any franchise provisions or restrictions relating to taxes, payment of a per cent. of gross earnings to municipalities, license fees, construction or maintenance of track area in highways, location and routing of facilities, rates and other regulations now or hereatfer fixed by municipalities, including the crews that shall operate railroad trains.*

The CHAIRMAN. The first suggested amendment is a matter of style, and goes to the commtitee on style.

Is the second suggested amendment called up?

Mr. REED. Mr. Chairman: The one right after that perhaps covers the same thing.

Mr. FOX. Mr. Chairman: I think it is well to leave that matter in the hands of the public service commission, and not attempt to define it here.

Mr. REED. Mr. Chairman: I move that the amendment be adopted. It seems to me there is a good deal of doubt on the part of municipalities to preserve as against the public service commission the rights conferred by their ordinances granting permission to street railways to enter their municipalities. That ought to be cleared up if possible.

Mr. ENGLISH. Mr. Chairman: May I call Judge Reed's attention to the fact that in section 17 as it appears in the tentative draft there was an effort made to clear up that situation by the insertion of the following language: "provided that nothing in this Constitution shall be so construed as to restrict the police power of the state over the operation of public utilities." Of course, if it is thought that that language is not broad enough and that it would be better to specifically enumerate certain subjects which it has been determined are within the police power of the state, and therefore may be exercised by the public service commission, as those subjects are enumerated, well and good; but it seems to me as section 17 is reported in the tentative draft it is quite as broad as it need be for all practical purposes.

Mr. REED. Mr. Chairman: I will withdraw that; we get to the same question.

The CHAIRMAN. The suggested amendment of Mr. Chrostwaite will be dropped, there being no motion to call it up.

The secretary read the amendment submitted in writing by Hon. Edward J. Fox, Commissioner, as follows:

Amend by striking out all after the semicolon on line 2 and inserting the following proviso: *provided that nothing herein contained shall be constructed to abridge the exercise of the police power of the commonwealth either as to the regulation and operation of public utilities or of the exercise of the like power delegated to the municipalities as to the control of public highways within their corporate limits.*

Mr. FOX. Mr. Chairman: I move that the amendment be adopted.

Mr. FISHER. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. PEPPER. Mr. Chairman: May I ask Judge Fox to state the particulars in which this represents an improvement over the proviso as it already appears in section 17? It is not perfectly clear to me.

Mr. FOX. I introduced this, Mr. Chairman, at the request of the representatives of the third class cities. They feared that the section as contained in the tentative draft would not permit them to control the highways. For example, a case was recently argued in the supreme court, as to right of city of Easton to require trolley cars to go to the right, and in order to placate them I suggested that we might change the language in this way.

On the question recurring,

Will the committee agree to the motion?

It was agreed to.

The secretary read the amendment submitted by Hon. Francis Shunk Brown, of Philadelphia, Pa., at public hearings, April 13, 1920, as follows:

Amend by striking out on line 2 the words [boroughs or township].

This amendment was not called up.

The secretary read the amendment submitted in writing by Hon. Alexander Simpson, Jr., of Philadelphia, Pa., as follows:

Strike out from this article and make section 2-B of article XVII.

Mr. PEPPER. Mr. Chairman: I move that the amendment be referred to the committee on style. It is a mere matter of transfer.

The CHAIRMAN. If there is no objection, it will be referred to the committee on style. The chair hears none.

The secretary read the amendment submitted in writing by E. P. Schoonmaker, Esq., city solicitor, Bradford, Pa., on behalf of the League of Third Class Cities, as follows:

Strike out all after the semicolon on line 2.

This amendment was not called up.

ARTICLE XVIII-A, SECTION 18.

The committee of the whole proceeded to the consideration of section 18 of article XVIII-A and suggested amendments.

The secretary read the amendment submitted in writing by T. F. Chrostwaite, president, Pennsylvania State Association of Boroughs, at public hearings April 7, 1920, as follows:

Section 18. Assessment of Benefits for Public Improvements.

1 *The general assembly may authorize assessments against all properties, whether*
2 *abutting or not, which are particularly benefited by the construction, enlarge-*
3 *ment, laying out, widening, grading or other improvement of public highways,*
4 *parks, buildings or other public works by the state or any municipality thereof.*

Amend by inserting a comma after the word "widening" on line 3, by inserting the word *acquisition* before the word "construction" on line 2, by inserting the words *sewers and watercourses* after the word "highways" on line 3, and by adding at the end therof the following:

A second improvement may be assessable in cases where there was no assessment for the first improvement and special benefits result.

Mr. REED. Mr. Chairman: If we are going to embark on the assessment of properties that are not abutting, why should we not assess them for sewers, waterworks and highways?

The CHAIRMAN. Does the gentleman call up the amendment?

Mr. REED. Yes. That is the first one, not the second one. I move that the amendment be adopted.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

The CHAIRMAN. The next suggested amendment is the one in italics, the second one.

Mr. PEPPER. Mr. Chairman: I think that might be regarded as supplanted by the proposal at the bottom of page 103. I think that one credited to Mr. Roberts was printed there in error. Was it not, Mr. Secretary.

The SECRETARY. Yes, Mr. Chairman.

Mr. PEPPER. Mr. Chairman: I would suggest that that be passed and the question that it raises dealt with by calling up the amendment at the foot of the page, which I shall do at the right time.

The CHAIRMAN. This suggested amendment will be dropped.

The secretary read the amendment submitted in writing by Owen J. Roberts, Esq., of Philadelphia, Pa., as follows:

Amend by striking out the word (particularly) on line 2, or amend the section so that it will read:

The general assembly may authorize assessments against all properties, whether abutting or not, for special benefits to such property arising out of construction, etc.,, etc.

This amendment was not called up.

The secretary read the amendment submitted in writing by Samuel R. Rosengarten, Esq., of Philadelphia, Pa., as follows:

Add at the end thereof the following:

When any such assessment shall have been duly paid for any particular property, a creditor deduction shall be allowed, to the amount of such payment, in any and all subsequent assessments of such property for purposes of ordinary taxation.

This amendment was not called up.

The secretary read the amendment submitted in writing by the Bureau of Municipal Research of Philadelphia, as follows:

Amend to read as follows:

The general assembly may authorize assessments against [all] properties, whether abutting or not, which are [particulaly] benefited by [the construction, enlargement, laying out, widening, grading or other improvement of public highways, parks, buildings or other public works by the state] *public improvements by the commonwealth* or any municipality thereof.

The general assembly may prescribe by general laws the means of ascertaining such benefits, the bodies by whom such benefits are to be ascertained and assessed, the methods of assessment, and the manner of payment and collection of such assessments.

Mr. PEPPER. Mr. Chairman: I move the adoption of that amendment.

Mr. ENGLISH. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. PEPPER. Mr. Chairman: The advantages of it seem to me to be fairly obvious. It was urged by Mr. Roberts and by the mayor's committee and submitted by the Bureau of Municipal Research. In addition to the verbal changes which appear in the section as it is in the tentative draft there is an additional paragraph. It seems to me to add greatly to the value of the particular provision.

The CHAIRMAN. It may all be considered as one amendment, Mr. Pepper?

Mr. REED. Mr. Chairman: The effect of that amendment would be that it is within the judgment of this body to decide whether property is benefited. You have stricken out the word "particularly," which does away with the line of cases which says that the benefits must be special and not shared by the general public. Then you leave it to some sort of a body to assess you in any way it pleases.

The CHAIRMAN. The chair would like to move an amendment to this section, to amend Mr. Pepper's suggestion by adding before the word "benefit" the words "specially and peculiarly." That is in the language of the supreme court decisions, and I looked at a case which was handed down from the supreme court this morning.

Mr. REED. Is not the other suggestion better than the present provision? That is to strike out all those words "construction, enlargement," and so on, and then say "public improvements by the commonwealth or municipality."

The CHAIRMAN. I think it is a good thing to have the provision Mr. Pepper calls attention to. I do not think we ought to give the power to the legislature to assess properties with a benefit that is not special or peculiar to the property in question, that applies generally to everybody.

Mr. PEPPER. Mr. Chairman: I rather suspect that the attempt to put in an adverb there is due to an unwillingness to face the situation that you have to face anyway if you adopt this section. I do not see how any kind of an agency that you are going to establish to assess a benefit against property is going to function unless it can specify the benefits which that property has received as a thing distinct from the general enhancement of values in the community resulting from the improvement, and I doubt very much whether you can add anything by using adverbs. It seems to me it is a sort of a mental anodyne, it does not get you anywhere. On the other hand, if you want to use an adverb it seems to me what you want to take is the antithesis to "general," and the antithesis to "general" is not "peculiar" but "particular." I think if you are going to keep an adverb it either ought to be "particular" benefit or some adverb or some word that is a real anithesis to "general." I do not think a "peculiar" benefit is a correct statement of the fact.

The CHAIRMAN. I have used the words the supreme court used, that benefits to be assessed against the property must be special and peculiar to the property in question. We so seldom in life have an opportunity to put in words that the supreme court has used that I hate to pass by the chance.

Mr. REED. Which is the word the supreme court uses?

The CHAIRMAN. Specially and peculiarly.

Mr. PEPPER. And my point is that the real antithesis is "particular" benefit.

Mr. REED. I do not like Mr. Pepper's reflection on adverbs, they are of very great use sometimes.

Mr. PEPPER. If you choose the right one.

The CHAIRMAN. I move to retain the word "particularly."

Mr. ENGLISH. Mr. Chairman: I wish you would not surrender your idea too quickly, because I have just been won over to it. The words "specially" and "peculiarly" do have a sort of technical meaning in municipal law. Anybody who has ever had anything to do with the assessment and collection of these special kind of taxes understands at once from judicial decision pretty much what the words "specially" and "peculiarly" mean. I say they have sort of a technical meaning, and they are not nearly as apt to give rise to speculation and litigation as would some new words. However, we may credit it in a literary sense. I favor the substitution suggested by the chair.

The CHAIRMAN. The chair insists on his amendment then as to the words "specially and peculiarly."

Mr. FISHER. Mr. Chairman: I second the amendment.

The CHAIRMAN. The question is on amending Mr. Pepper's motion by inserting the words "specially and peculiarly."

On the question,

Will the committee agree to the amendment?

It was agreed to.

On the question,

Will the committee agree to the motion as amended?

Mr. ENGLISH. Mr. Chairman: For a point of information: As I understand it, the words "specially and peculiarly" have been substituted for the word "particularly" in the second line of section 18?

The CHAIRMAN. Yes, sir.

Mr. McCORMICK. I thought it was the second line of the amendment of Mr. Pepper.

The CHAIRMAN. It will have the same effect.

Mr. STEVENS. Mr. Chairman: May I through you ask a question of Mr. Pepper? I notice that this section prescribes merely the assessment of benefits. Why is there no provision made for the collection of damages when the property is not abutting or specially and peculiarly damaged?

Mr. PEPPER. Mr. Chairman: The only answer I can give, sir, is that the municipalities are interested in collecting assets, not in accumulating liabilities. The thought seems to be that this is the way in which you can finance the cost of public improvements by getting a large measure of the benefit which results from it out of the properties concerned. It will be remembered by the commission that when this question was before us originally that the proposal was made that there ought to be a reciprocal provision for collecting the consequential damage, that properties should be entitled to damage that was consequential notwithstanding the fact that the property in question was not taken. That did not strike the commission favorably and the tentative draft was adopted as we have it now.

Mr. ENGLISH. It seems to me, Mr. Chairman, that the law goes about as far as it very well can in the matter of assessment and collection of damages incidental to public improvements, that because of their very speculative character it would be impossible to determine the extent, and it would be dangerous to contemplate the possible extent of incidental damages or damages that were incidental to public improvements. I do not see that it has any very close relation to this question at all, and I think a section was submitted and discussed in the commission some time ago, the purpose of which was to impose upon municipalities the liability for such damages, and it was the sense of the commission that that would be an improper thing to do.

Mr. FISHER. Mr. Chairman: I do not have any objection to the purpose of this amendment, but it seems to me that it is unnecessary. There is no restriction on the legislature in creating the machinery which is indicated in this amendment, which I understand is at the bottom of page 103. There undoubtedly is the power by implication for the legislature to create the necessary machinery for the exercise of any power which may be granted to it. That question has been threshed out over and over in connection with our federal constitution. What useful purpose is to be served by inserting something that is not essential. At the present time, as I recall it, there is an act of assembly which authorizes the courts of the several counties to appoint boards in the several counties for the purposes of performing just such functions as are indicated here. In condemnation proceedings growing out of the widening of streets, laying out of highways, building of bridges, and all that sort of thing, a board consisting of nine viewers is established and from this board the court from time to time selects three who are appointed to assess the dam-

ages or benefits in each particular case. I think the power is ample and unquestioned, and it seems to me that we are performing a work of supererogation here if we add this provision.

Mr. PEPPER. The impression exists, Mr. Chairman, I do not know whether it is justified or not, that the only constitutional authority for assessment of damages is a judicial authority, that is, that the courts have to function. The act to which Senator Fisher refers is drawn upon the theory that it must be the function of the court itself to do this thing. If the amendment now proposed were to prevail the legislature would not be restricted to working out these results through a judicial body, but, subject to constitutional rights of appeal from their decision, it might be done through a board, legislative or executive in its character, not acting under appointment of the courts and not a department of judicial activity. That is the thought of this amendment.

Mr. FISHER. Mr. Chairman: The answer to that is there is nothing which obliges the legislature to designate a court as the appointing agency for the creation of this mechanical device, if that is what it is. The legislature may as well put the same power in the board of county commissioners, and could easily do so. There is no legislative restraint. Of course, we all recall that functions and powers may always be exercised by the state unless limited by federal or state constitutions, or unless the powers have been delegated. So I think that the way is open now, without this proposed section, for the legislature to do anything or create any body which it may in its wisdom see fit.

Mr. PEPPER. Mr. Chairman: There was doubt as to the constitutionality of the tribunal to assess benefits and provide for their collection which is not judicial in its character, and I have suggested that the change in this amendment was to remove constitutional doubt on that subject and to make it possible for the legislature to act more freely, but if that is not the view of the members of the commission, I do not press it upon them.

Mr. ENGLISH. Mr. Chairman: I had the same opinion as Senator Fisher has as to the provisions of the law until Mr. Pepper created the doubt he has by what he said here a moment ago. It does not seem to me it will do any harm to allow this provision to remain. At best it is declaratory of the existing law, and if there is any doubt about the law giving that power, it seems to me it might serve a very useful purpose.

Mr. FISHER. Mr. Chairman: Then I do not object to that suggestion, but if we put this provision, which applies only to the assessment of benefits in one particular case, in, because we have doubts of the power of the legislature, do we not put into the field of doubt all other cases where there are assessments of damages? When we take action of this kind here why do we not broaden the scope of the provision so as to include the boards appointed to assess all kinds of damages."

Mr. PEPPER. Mr. Chairman: Are any such boards in existence?

The CHAIRMAN. If we are going to broaden anything we are not going to get through.

Mr. PEPPER. Mr. Chairman: My impression is that the boards to which the Senator refers are in every instance treated as functionaries of the court.

On the question recurring,

Will the committee agree to the motion as amended?

It was agreed to.

The secretary read the amendment submitted in writing by F. P. Schoonmaker, Esq., city solicitor, Bradford, Pa., on behalf of the League of Third Class Cities, as follows:

Amend to read as follows:

The general assembly may authorize assessments against all properties, whether abutting or not, *which are benefited by the construction of a public utility or other public improvement, and may also authorize assessments against all such properties whether abutting or not which are benefited by the reconstruction or renewal of any such public utility or other public improvement.*

The CHAIRMAN. It is the understanding of the chair that the amendments down to the last one on page 104, which was submitted by Justice Simpson fall by the adoption of the amendment that has just been adopted.

The secretary read the amendment submitted in writing by Andrew Wright Crawford, field secretary, American Civic Association, Philadelphia, Pa., as follows:

Amend by striking out the word [particularly] on line 2 and substituting therefor the word *specially.*

This amendment was not called up.

The secretary read the amendment submitted in writing by the Chairman as follows:

Amend by striking out on line 2 the word [particularly] and inserting in lieu thereof the words *specially and peculiarly.*

This amendment was not called up.

The secretary read the amendment submitted in writing by William M. Jacoby, executive secretary, Flood Commission of Pittsburgh, at public hearings April 7, 1920, as follows:

Amend to read as follows:

The general assembly may authorize assessments against all properties, whether abutting or not, which are particularly benefited by *any public improvement made by the state or any municipality thereof.*

This amendment was not called up.

The secretary read the amendment submitted by Hon. Francis Shunk Brown, of Philadelphia, at public hearings April 20, 1920, as follows:

Strike out.

This amendment was not called up.

The secretary read the amendment submitted in writing by Hon. Alexander Simpson, Jr., of Philadelphia, Pa., as follows:

Amend by inserting after the word "assembly" on the first line the words *by general law.*

Mr. FOX. Mr. Chairman: I move that the amendment be adopted

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVIII-A, SECTION 19.

The committee of the whole proceeded to the consideration of section 19 of article XVIII-A and suggested amendments.

The secretary read the section and amendment submitted by John Ihlder, secretary, Philadelphia Housing Association, at public hearings April 6, 1920, as follows:

Section 19. Extent of Land Permitted to Be Taken for Public Improvements.

1 Whenever the public purposes for which land is taken can best be attained
2 by acquiring more land than the commonwealth or the municipality proposes
3 to retain, the commonwealth or the municipality, subject to such limitations as
4 the general assembly may prescribe, may take all land which in the judgment
5 of the proper officials is needed for the attainment of such purpose and may
6 thereafter dispose of portions thereof, subject to restrictions protective of the
7 public interest.

Amend by substituting the following:

When it is to the public interest the commonwealth or a municipality may take, impose and lease or sell land and the improvements thereon, subject to such limitations as the general assembly may prescribe.

This amendment was not called up.

The secretary read the amendment submitted in writing by the Chairman, as follows:

Amend by striking out all after the word "purpose" on line 5.

Mr. REED. Mr. Chairman: I move that the amendment be adopted.

The CHAIRMAN. I will second the motion.

On the question,

Will the committee agree to the motion?

Mr. PEPPER. Mr. Chairman: Is that not an indirect way of striking down the whole section?

The CHAIRMAN. Has it not been held, and can we get away from the proposition, that what we adopt here is not the constitution of Pennsylvania? What I had in mind about it was that it reverts to the person who was the owner prior to the use. An eminent-domainer could not sell for private use that which it had taken for public use.

Mr. PEPPER. Mr. Chairman: I had that in mind, but of course, we must conform to the requirements of the constitution of the United States; but the section is drawn with this thought in mind that the acquisition of more property than you expect to retain and the subsequent disposition of such excess property, subject to restrictions that protect the public interest, is a way of taking such interests in the land redisposed of as are represented by the restrictions imposed and retained. In other words, if one were to think of it in this way; suppose you were to take for the purpose of public improvement more land than you intended to retain, but having acquired the land were then to retain a right of way over the excess land and sell the excess land subject to the right of way, the right of way being incidental to the improvement which had led you to take it in the first instance, the theory of the section is that in order to secure your right of way you had made a public use of the land to which you had subjected it.

The CHAIRMAN. Would the thought be clarified if you changed the last word "interest" to "purpose?"

Mr. PEPPER. Mr. Chairman: Yes, I think that would be an improvement. "For the attainment of such purpose and may there-

after dispose of portions thereof, subject to restrictions protective of the public purpose," or some such phrase as that, I would think would be an improvement, and I move that as an amendment.

The CHAIRMAN. I second the motion.

On the question,

Will the committee agree to the motion?

The CHAIRMAN. Then I will withdraw my suggested amendment, and the question will be on the amendment to substitute the word "purpose" for "interest."

Mr. REED. Mr. Chairman: The whole provision as passed the other night is an abuse of the power of eminent domain which will probably get somebody into trouble with the federal courts. Your amendment would have stricken down about ninety per cent. of the illegality.

The CHAIRMAN. I think it would be extremely likely. I think it is purely in the interest of public purpose, and I have no objection to that; that is, you may take more for a street than the actual street lines require and lay out the extra land in litle parklets, and things of that kind.

Mr. REED. Mr. Chairman: I just wanted to go on record as saying that it was all wrong.

The CHAIRMAN. I never like to differ with the Judge, but that is my own understanding of it.

On the question recurring,

Will the committee agree to the motion?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVIII-A, SECTION 19-A (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 19-A of article XVIII-A.

The secretary read the proposed new section submitted by Andrew Wright Crawford, Esq., field secretary, American Civic Association, at public hearings April 6, 1920, as follows:

Section 19-A (New).

For the purpose of promoting the public health, safety, order and general welfare, the legislature may authorize municipalities to regulate the location, size and use of buildings therein and to make different regulations for different districts thereof.

Mr. ENGLISH. Mr. Chairman: I move that the amendment be adopted.

Mr. PINCHOT. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. FOX. Mr. Chairman: Is that necessary? Is not that simply the exercise of police power?

Mr. ENGLISH. Mr. Chairman: As I understand the section in answer to Judge Fox's inquiry, it is intended to confer upon municipalities the right to zone the territory within which they are embraced, and that is a question that has become a rather burning one in Pennsylvania as well as elsewhere throughout the country. There has been a depreciation of property due to indiscriminate scattering through-

out the cities of manufacturing industries. Up to this time, in the absence of some such constitutional provision, there is no way in which a municipality can control that sort of thing. This is a zoning amendment as I understand it, and is intended to confer zoning powers on municipalities which they do not have at the present time.

Mr. McCORMICK. Mr. Chairman: Does it also regulate the skyline of the buildings?

Mr. PEPPER. Mr. Chairman: It does, as I understand it.

Mr. ENGLISH. Mr. Chairman: The size of buildings proposed.

Mr. PEPPER. And so far as light and air have relation to public health.

On the question recurring,

Will the committee agree to the motion?

It was agreed to.

ARTICLE XVIII-A, SECTION 19-B (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 19-B of article XVIII-A.

The secretary read the proposed new section submitted by Andrew Wright Crawford, Esq., field secretary, American Civic Association at public hearings April 6, 1920, and unanimously approved at mass meeting on billboard menace under auspices of the Fellowship of the American Academy of the Fine Arts, held in Philadelphia on March 24, 1920, Miss Mary Butler, Chairman, this proposed amendment being opposed at the public hearings April 21, 1920, by E. Allen Forst, Esq., representing the Poster Advertising Association, Inc., and in writing by Tom Nokes, Ad-Press Club, Johnstown, Pa., as follows:

Section 19-B (New).

Advertising on public ways, in public places, and on private property within public view may be regulated by law.

Mr. THORPE. Mr. Chairman: I move that the amendment be adopted.

Mr. ENGLISH. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE XVIII-A, SECTION 20.

The committee of the whole proceeded to the consideration of section 20 of article XVIII-A and suggested amendments.

The secretary read the section and amendment submitted in writing by T. F. Chrostwaite, president, Pennsylvania State Association of Boroughs, Hanover, Pa., at public hearings, April 7, 1920, as follows:

Section 20. Debts Incurred by Municipal Commissions.

1 No debt shall be contracted or liability incurred by any municipal commission,
2 except in pursuance of an appropriation previously made therefor by the
3 municipal government.

Amend by adding at the end thereof the following:

No debt incurred for municipal improvements or buildings shall be subject to a state tax.

This amendment was not called up.

The secretary read the amendment submitted in writing by the Bureau of Municipal Research of Philadelphia, as follows:

Amend by inserting after the word "commission" on line 2 the following words: *board, officer, employe or other agency.*

Mr. REED. Mr. Chairman: I move that the amendment be adopted.

Mr. ENGLISH. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVIII-A, SECTION 21.

The committee of the whole proceeded to the consideration of section 21 of article XVIII-A and suggested amendments.

The secretary read the section and amendment submitted by William S. Twining, director department of city transit, Philadelphia, Pa., at public hearings April 6, 1920, as follows:

Section 21. Municipalities Not to Become Stockholders in Corporations, Etc., Nor Loan Credit.

1 The general assembly shall not authorize any municipality to become a stock-
2 holder in any company, association or corporation or to obtain or appropriate
3 money for, or to loan its credit to, any corporation, association or individual;
4 but a lease by a municipality of a public service facility owned by it shall not
5 be construed to violate the provisions of this section, although the principal
6 consideration for the lease is the covenant of the lessee to use the facility under
7 regulations protective of the public interest, or because the provision for a
8 pecuniary return of the lessor is made contingent upon the earnings of the
9 lessee's entire system.

Amend by striking out all after the word "section" on line 6.

This amendment was not called up.

The secretary read the amendment submitted in writing by A. B. Sperry, of Pittsburgh, Pa., as follows:

Amend by adding at the end thereof the following: *provided: that every such lease shall contain a covenant of covenants making it invalid and void if its provisions result in any increase of municipal taxes.*

This amendment was not called up.

The secretary read the amendment submitted by John Ihlder, secretary, Philadelphia Housing Association, at public hearings April 6, 1920, as follows:

Amend by inserting on line 4 and on line 6 after the word "facility" the words *or of land*, and by inserting at the end thereof the words *or holdings*.

Mr. PEPPER. Mr. Chairman: I move that the amendment be adopted.

The CHAIRMAN. It does not seem to me that that has any relation to this amendment.

Mr. PEPPER. Mr. Chairman: I think it has not, and I will withdraw the motion.

The CHAIRMAN. This amendment will be dropped.

The secretary read the amendment submitted in writing by Hon. Alexander Simpson, Jr., of Philadelphia, as follows:

Strike out, provided suggested substitute for section 6, article IX, is adopted.

The CHAIRMAN. This amendment is a matter of style, as the chair understands it, and will go to the committee on style.

The secretary read the amendment submitted in writing by Maurice Scharff, of Pittsburgh, Pa., as follows:

Amend by striking out all after the semicolon on line 4 and inserting the follow- : *but a contract made in the manner provided by law between a municipality and*

a public service company shall not be construed to violate the provisions of this section, because it provides for the payment by the municipality of a contribution to the cost of a public service, or because it provides for the lease of a public service facility owned by the municipality for a pecuniary return which is made contingent upon the earnings of the lessee's entire system.

Or by inserting at the same place the following: *but the general assembly may, by general legislation, without violating the provisions of this section, authorize the making of contracts between municipalities and public service companies, providing for the payment by the municipality of a contribution to the cost of a public service, or for the lease of a public service facility owned by the municipality for a pecuniary return which is made contingent upon the earnings of the lessee's entire system.*

Mr. ENGLISH. Mr. Chairman: I hesitated to move the adoption of the latter of the alternatives because the matter was threshed out in one of the meetings of the commission and that was decided.

The CHAIRMAN. The chair hears no motion to adopt the amendment, and it will be dropped.

ARTICLE XVIII-A, SECTION 22.

The committee of the whole proceeded to the consideration of section 22 of article XVIII-A and suggested amendments.

The secretary read the section and amendment submitted in writing by T. F. Chrostwaite, president, Pennsylvania State Association of Boroughs, Hanover, Pa., at public hearings April 7, 1920, as follows:

Section 22. Debts of Municipalities.—Certain Public Works.

1 A municipality shall have the power, in the manner provided by law, to
2 incur a net indebtedness to an amount not exceeding ten per centum upon
3 the assessed value of the taxable property therein, but no indebtedness shall be
4 incurred or no increase thereof made in excess of three per centum of such
5 assessed valuation, except with the assent of a majority of the electors of the
6 municipality voting at a public election.
7 In calculating the indebtedness of a municipality for the purpose of ascertain-
8 ing its borrowing capacity, there shall be deducted from the indebtedness and
9 disregarded in the calculation:
10 (a) The amount of any indebtedness incurred for public improvements secured
11 by liens on such improvements and imposing no municipal obligation what-
12 ever.
13 (b) Any debt incurred to acquire public improvements, provided the net
14 income derived from the property acquired for the period of five years immedi-
15 ately preceding its acquisition shall have been sufficient to have paid the interest
16 and amortization charges for five years on such indebtedness.
17 (c) An amount equal to that capital sum which will yield at the legal rate
18 of interest and amortization charges an annual revenue equal to the net revenue
19 received by the municipality from any public improvement during the last pre-
20 ceding fiscal year, provided the debt incurred for the acquisition of the property
21 has not been deducted under the provisions of clause (b) hereof.

Amend the first paragraph so as to read:

Section 22. *A municipality shall have the power to incur a net indebtedness not in excess of three per centum of the assessed value of the taxable property therein, and shall have the power*, etc., as written.

Amend clause (b) as follows:

Insert after the word "acquire" the words *or construct*, first line.

Insert after the word "acquisition" the words *or construction*, third line.

Amend clause (c) by inserting the words *or construction* after the word "acquisition."

Amend clause (a), (b) and (c) by inserting after the word "improvements" the words *or public works*.

Mr. ENGLISH. Mr. Chairman: The succeeding four or five pages, up to page 112, are taken up with matter relating to this section, and it seems to me that the entire section is very clearly rewritten and quite clearly restated in page 110, where the proposed amendment submitted by the bureau of municipal research of Philadelphia is printed, and I would suggest to the members of the commission that

we could better the language and add some features to this section which are wise by substituting for the existing section the substitute beginning on the middle of page 110, and I so move.

Mr. PEPPER. Mr. Chairman: I second the motion.

The secretary read the substitute as follows:

Subject to the provisions of general law and such regulations as may be made by a state-wide agency having jurisdiction, municipalities may from time to time incur debt; but no municipality shall ever have the power to incur debt or in any manner extend the term or terms of then existing debt, if the aggregate gross debt of such municipality then exceeds or would exceed the sum of:

(a) Ten per centum of the assessed value of real estate taxable by or for the benefit of such municipality.

(b) An amount equal to that capital sum which, at the legal rate of interest and such amortization charges as the general assembly may prescribe, would yield an amount equal to the net revenue derived by the municipality during the last preceding fiscal year from its public improvements.

(c) The amount of any indebtedness secured by liens on public improvements and imposing no municipal obligation whatever, provided the net revenue derived from such improvements shall not have been taken into account under paragraph (b).

(d) So much of any indebtedness incurred within five years to construct or purchase public improvements as, in the judgment of a state-wide agency having jurisdiction, is likely to be allowable under paragraph (b) within six years after its incurrence, provided the net revenue derived from such improvements shall not have been taken into account under paragraph (b), and provided such indebtedness shall not have been taken into account under paragraph (c).

(e) The amount of the municipality's own bonds or other evidences of indebtedness owned by it and inviolably pledged toward the payment of the principal of its indebtedness.

(f) The amount of cash, lawful investments and solvent debts due the municipality which are inviolably pledged toward the payment of the principal of its indebtedness.

(g) Eight per centum of the amount estimated, in the manner provided by law, to be received by the municipality within five years from assessments against property benefited by public improvements, provided such amount is inviolably pledged toward the payment of the principal of the municipality's indebtedness, and provided such special assessments have not been taken into account under paragraph (f).

Unless the assent of the majority of the electors voting thereon at a public election shall have been obtained, or unless the general assembly shall have provided that the question is to be voted upon only after a petition for a referendum has been filed and a sufficient number of electors shall have not joined in such a petition, no municipality shall ever have power to incur debt, or in any manner to extend the term or terms of then existing debt, in excess of * * * * in any one year.

The CHAIRMAN. This is a substitute, beginning at the bottom of page 110, and the motion is that this be substituted for section 22 as in the tentative draft and that all suggested intervening amendments be dropped.

Mr. ENGLISH. Yes, and the amendment subsequent to this section.

On the question,

Will the committee agree to the motion?

Mr. PEPPER. Mr. Chairman: May I ask Mr. English through you what he would think of modifying slightly the last paragraph as it appears on page 111 of the section which his motion presents? In that last paragraph as printed there is, as you will see, sir, a provision that certain things may happen "after a petition for referendum has been filed and a sufficient number of electors," and so on. It occurs to me that the procedure can be simplified somewhat if we substitute for that last paragraph the following, which I think has been distributed upon the desks of the commission: "Unless the election shall have been obtained, no municipality shall ever have power to incur debt, or in any manner to extend the term or terms of then existing debts, in excess of an aggregate of such increases

and extensions in any one year, of one-quarter of one per centum of the assessed value of the taxable property." In other words, it eliminates the possibility of the referendum on this subject and relegates the whole matter to decision at an election.

Mr. ENGLISH. Mr. Chairman: I accept Mr. Pepper's suggestion as an amendment to my motion.

Mr. FISHER. Mr. Chairman: This, of course, is a very important provision, and inasmuch as I took some part in the adoption of the section as it exists in the tentative draft perhaps a remark may not be out of place. In the section as originally drawn we approached the exemptions in calculating the amount of the debt in a negative way, and the new section proposes to substitute the positive form of statement. I think in that particular it is superior to the original draft. The proposed substitute also includes some items which we had in mind when we drew the original but which were not inserted and which I think would be entirely proper. The main substance of the new provision is the proposed creation of a state body or agency to pass upon the issues of municipal securities. This is quite an advanced step, one that is in vogue in other states, so I understand, and it seems to me will be great benefit to the municipalities generally. We all know very often the courts are called upon to pass upon the validity of municipal issues. We also know that very hard and fast rules have been laid down which are difficult to comply with. We have had an experience recently in our own county where a bond issue after it had been authorized by a county election had fallen just because of an oversight of the attorneys who had it in charge in not complying with the law in a minor particular. If you have an agency that can put the official stamp of approval upon such issues it will be of great advantage to municipalities. The only fear I have of that feature of the case is that there is a growing tendency to demand home rule, and the thousand municipalities of the state, and more than thousands, that are called on from time to time to exercise their powers of credit, may object to it as an interference by the state. I was hopeful that the organization of boroughs and third class cities and other organizations which represent municipalities might have had an opportunity to express themselves on this question. I have not heard from them, I do not know whether other members of the commission have heard from them, but it seems to me this is such a commendable provision that they will be willing to accept it when they give the matter due consideration. Therefore I am perfectly willing to have this provision substituted under the motion of Mr. English.

On the question,

Will the committee agree to the substitute?

It was agreed to.

Mr. REED. Mr. Chairman: In the section we have just adopted there is a blank, "in excess of in any one year.

The CHAIRMAN. That was taken up in Mr. Pepper's amendment.

The secretary read the amendment submitted in writing by Owen J. Roberts, Esq., of Philadelphia, Pa., as follows:

Amend paragraph 3 so that it will read as follows:

(a) The amount of any indebtedness incurred for public improvements secured by *mortgage or other lien on the property comprehended in such improvement* and imposing no municipal obligation whatever.

This amendment was not called up.

The secretary read the amendment submitted in writing by H. K. Siebeneck, Esq., of Pittsburgh, Pa., as follows:

Amend by adding at the end of the first paragraph the following: *but the net indebtedness of all municipalities in any area shall not exceed forty per cent. of such assessed value.*

This amendment was not called up.

The secretary read the amendment suggested by Maurice R. Scharff, of Pittsburgh, Pa., at public hearings April 6, 1920, as follows:

Amend by adding at the end thereof the words:

The total indebtedness of all the municipalities covering any one place shall not exceed per cent. of the assessed value of all taxable property.

This amendment was not called up.

The secretary read the amendment submitted in writing by Owen J. Roberts, Esq., of Philadelphia, as follows:

Amend by adding at the end thereof the following new clause:

(d) An amount equal to moneys in the sinking fund.

This amendment was not called up.

The secretary read the amendment submitted by James Collins Jones, Esq., of Philadelphia, at public hearings April 14, 1920, as follows:

Strike out this section and section 23 and substitute therefor the following:

The general assembly, by general laws or through such agencies as it may from time to time create, shall have power to regulate municipal indebtedness and financial administration.

This amendment was not called up.

The secretary read the amendment submitted in writing by the Legislative Reference Bureau, Harrisburg, Pa., as follows:

Amend by adding at the end thereof the following new clauses:

(e) An amount equal to the value of all bonds and cash held in the sinking fund.

(f) The amount of cash in the treasury of the municipality available for the sinking fund.

(g) The amount of revenue to be collected within the current year for payment into the sinking fund.

This amendment was not called up.

The secretary read the amendment submitted by Andrew Wright Crawford, Esq., field secretary, American Civic Association, Philadelphia, at public hearings April 6, 1920, as follows:

Amend by adding the following clause:

(h) An amount equal to the total sum that shall be specially assessed against properties, whether abutting or not, which are specially benefited by the construction financed by the proceeds of municipal bonds.

This amendment was not called up.

The secretary read the amendment submitted in writing by E. P. Schoonmaker, Esq., city solicitor, Bradford, Pa., on behalf of the League of Third Class Cities, as follows:

Amend by inserting on line 11 after the word "incurred for" the word *public utility or other.*

This amendment was not called up..

The secretary read the amendment submitted in writing by William S. Twining, Esq., director, department of city transit, Philadelphia, as follows:

Amend by inserting on line 6 after the word "voting" the word *thereon.*

Amend by striking out on line 4 the word [three] and inserting the word *two.*

Amend by adding at the end of paragraph 1 the following: *and where a county, township or borough has a debt of seven per centum upon the assessed value of the taxable property therein no increase in the debt shall be made without the assent in like manner of three-fifths of the electors of the municipality voting thereon. The general assembly may by law reduce or further limit the power herein conferred.*

Amend by inserting in clause (b) after the word "acquire" on line 13 the words *by purchase, lease or in any other manner.*

Amend by adding the following clause:

(i) Where the indebtedness is incurred for a public improvement, an amount equal to eighty per centum of the amount which may be assessed against properties to be particularly benefited by such improvement as such amount is estimated in a manner provided by law.

This amendment was not called up.

The secretary read the amendment submitted in writing by the Bureau of Municipal Research of Philadelphia, as follows:

Substitute for this section the following:

Subject to the provisions of general law and such regulations as may be made by a state-wide agency having jurisdiction, municipalities may from time to time incur debt; but no municipality shall ever have power to incur debt or in any manner extend the term or terms of then existing debt, if the aggregate gross debt of such municipality then exceeds or would exceed the sum of:

(a) Ten per centum of the assessed value of real estate taxable by or for the benefit of such municipality.

(b) An amount equal to that capital sum which, at the legal rate of interest and such amortization charges as the general assembly may prescribe, would yield an amount equal to the net revenue derived by the municipality during the last preceding year from its public improvements.

(c) The amount of any indebtedness secured by liens on public improvements and imposing no municipal obligations whatever, provided the net revenue derived from such improvements shall not have been taken into account under paragraph (b).

(d) So much of any indebtedness incurred within five years to construct or purchase public improvements as, in the judgment of a state-wide agency having jurisdiction, is likely to be allowable under paragraph (b) within six years after its incurrence, provided the net revenue derived from such improvements shall not have been taken into account under paragraph (b), and provided such indebtedness shall not have been taken into account under paragraph (c).

(e) The amount of the municipality's own bonds or other evidences of indebtedness owned by it and inviolably pledged toward the payment of the principal of its indebtedness.

(f) The amount of cash, lawful investments and solvent debts due the municipality which are inviolably pledged toward the payment of the principal of its indebtedness.

(g) Eighty per centum of the amount estimated, in the manner provided by law, to be received by the municipality within five years from assessments against property benefited by public improvements, provided such amount is inviolably pledged toward the payment of the principal of the municipality's indebtedness, and provided such special assessments have not been taken into account under paragraph (f).

Unless the assent of the majority of the electors voting thereon at a public election shall have been obtained, or unless the general assembly shall have provided that the question is to be voted upon only after a petition for a referendum has been filed and a sufficient number of electors shall not have joined in such a petition, no municipality shall ever have power to incur debt, or in any manner to extend the term or terms of then existing debt, in excess of in one year

The CHAIRMAN. This amendment having already been offered as a substitute for a preceding amendment, no further action will be necessary.

The secretary read the amendment submitted in writing by A. B. Sperry, of Pittsburgh, Pa., as follows:

Amend by adding at the end of the first paragraph the following:

** * * after thirty day's notice as to the time and place of the election, assessed valuation of taxable property affected by proposed increase of indebtedness, amount of all existing indebtedness of all overlapping or other municipal corpora-*

tions or districts for or by which taxes have been levied or assessed upon property affected by the proposed indebtedness with all deductions made or to be made in computing net indebtedness clearly shown, amount and purpose of the proposed increase in indebtedness and a formal expression by the municipal authorities who authorize such notice and election as to whether in their opinion the improvement or other purpose for which the proposed indebtedness is to be incurred will continue to be of value for a longer period than the life of the bonds to be issued for it if the result of the proposed indebtedness election is favorable.

Amend further by adding at the end thereof the following:

(d) Every bond or other contract of indebtedness issued by a municipality shall include prominently in its title the words "non-deductible debt" or the words "deductible debt" as notice to the purchasers of such bonds of the character of the obligation. In the wording of the non-deductible debt bonds there shall be a further recital of the fact that the indebtedness of which it is evidence has not and can not be deducted in computing the net indebtedness of the municipality. In the wording of the deductible debt bonds there shall be a further recital of the fact that the indebtedness of which it is evidence has or can be deducted in computing the net indebtedness of the municipality.

(e) Bonds or other contracts of indebtedness as well as their coupons and the indebtedness of payments represented thereby issued by this commonwealth shall be exempt from taxation by the commonwealth or its municipal or other subdivisions except as to inheritance or succession taxes. Bonds or other contracts of indebtedness as well as their coupons and the indebtedness or payments represented thereby issued by any municipality or municipal district of this commonwealth for the full payment of which taxes shall have been levied on all the property taxable for municipal purposes in such municipality or municipal district and which bonds or contracts of indebtedness represent indebtedness not deductible in computing the indebtedness or net indebtedness of the municipality under legal provisions for computing such indebtedness or net indebtedness with relation to constitutional or statutory limitations of indebtedness shall be exempt from taxation by this commonwealth or its municipal or other subdivisions except as to inheritance or succession taxes.

This amendment was not called up.

ARTICLE XVIII-A, SECTION 23.

The committee of the whole proceeded to the consideration of section 23 of article XVIII-A and suggested amendments.

The secretary read the section and amendment submitted in writing by the Legislative Reference Bureau, Harrisburg, Pa., as follows:

Section 23. Sinking Fund.—Serial Bond Provisions.

1 In incurring indebtedness any municipality may issue its obligations maturing
2 not later than fifty years from the date thereof, and except as herein provided
3 shall create a sinking fund sufficient to retire such obligations at maturiny, to
4 which purpose said sinking fund shall be inviolably pledged. The payments to
5 such sinking fund may be in equal or graded annual or other periodical install-
6 ments. But such obligations may be made to mature serially, beginning one or
7 more years after the date thereof, and not extending beyond fifty years from
8 such date. No municipality shall incur any indebtedness unless it shall at or
9 before the incurring thereof provide for the collection of an annual tax sufficient
10 to pay the interest and also the principal of such debt at maturity. When serial
11 obligations shall be issued as herein provided, the proceeds of the tax levied to
12 pay the principal thereof shall in lieu of payment into a sinking fund be used
13 for the discharge of such serial issues as they shall respectively mature, except
14 that certificates of indebtedness or other obligations to mature within the current
15 fiscal year may be issued in anticipation of the collection of current revenue.
16 Where any indebtedness shall be incurred by any municipality for the purpose of
17 the construction or acquisition of public works of any character from which
18 income or revenue is to be derived by said municipality, or for the reclamation of
19 land to be used for the construction of wharves or docks owned or to be owned
20 by it, such obligations may be in an amount sufficient to provide for and may
21 include the amount of the interest and sinking fund or serial charges which may
22 accrue thereon throughout the period of construction or acquisition, and until
23 the expiration of one year after the completion thereof, but not extending beyond
24 five years from the incurring of such debt, and said municipality shall not be
25 required to levy a tax to pay said interest and sinking fund charges until the
26 expiration of the said period of one year from the completion of such construction
27 or acquisition.

Amend by inserting a period after the word "obligation," on line 1, and striking out on lines 1 and 2 the words [maturing not later than fifty years from the date thereof, and except as herein provided] and inserting the words: *The general*

*assembly shall provide for a uniform system applicable to all municipalities fixing maximum terms for maturity of such obligations issued for particular purposes, but in no case shall any such terms be fixed to exceed fifty years. Except as herein provided, such municipality * * * .*

Mr. ENGLISH. Mr. Chairman: I move that the amendment be adopted.

Mr. FOX. Mr. Chairman: I second the motion.

The motion was agreed to.

The secretary read the amendment submitted by Andrew Wright Crawford, Esq., field secretary American Civic Association, at public hearings April 6, 1920, as follows:

Amend by adding after the word "thereof" on line 2 the words *except that obligations issued for the acquisition of parks may be made to mature not later than seventy-five years from the date thereof * * * .*

This amendment was not called up.

The secretary read the amendment submitted by William S. Twining, Esq., director, department of city transit, Philadelphia, Pa., at public hearings April 6, 1920, endorsed by the Philadelphia Board of Trade, as follows:

Substitute the following:

Section 23. A municipality shall not incur any indebtedness to run for more than fifty years, and it shall be optional with the municipality whether the serial method or sinking fund method of repayment shall be adopted. In case the serial method is adopted, the municipality shall, at or before the time of incurring such indebtedness provide for the collection of such annual income (tax?) as shall be sufficient to pay the total interest and the proportional part of the principal maturing each year. In case the sinking fund method shall be adopted, the municipality shall at or before the time of incurring such indebtedness provide for a sinking fund sufficient to discharge the indebtedness at maturity and inviolably pledged to such use, and shall further provide for the collection of an annual tax sufficient to pay interest and meet sinking fund requirements.

This amendment was not called up.

The secretary read the amendment submitted in writing by the Bureau of Municipal Research of Philadelphia, Pa., as follows:

Substitute the following:

No municipality shall ever have power to incur any indebtedness maturing later than fifty years from its incurrence; and, unless some other method of amortization is authorized and approved by a state-wide agency having jurisdiction, all indebtedness incurred by municipalities shall be payable in such manner that the aggregate amount of interest and principal falling due in any one year in respect of an indebtedness shall not be less than such aggregate amount falling due in any later year.

At or before the time of incurring an indebtedness the municipality shall levy and provide for the collection of an annual tax sufficient to pay the interest thereon and the principal thereof as and when they fall due, which annual tax shall be inviolably pledged and applied exclusively to the payment of such interest and principal.

This amendment was not called up.

The secretary read the amendment submitted in writing by A. B. Sperry, of Pittsburgh, Pa., as follows:

Substitute the following:

Section 23. Any municipality may issue interest-bearing obligations maturing not more than fifty years from the time the indebtedness is incurred as provided by law, but before such indebtedness is incurred an annual tax sufficient to pay the interest on such indebtedness and the principal thereof at such time or times as the principal authorities may designate is levied and assessed. The date of payment shall be definitely set forth in each bond or other contract of indebtedness and moneys received from taxes levied for such indebtedness shall not be used for any other purpose until all the indebtedness has been paid.

This amendment was not called up.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVIII, SECTION 23-A (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 23-B of article XVIII-A.

The secretary read the proposed new section submitted in writing by James Collins Jones, Esq., of Philadelphia, as follows:

Section 23-A (New).

The general assembly, by general laws or through such agency as it may from time to time create, shall have power to regulate municipal indebtedness and municipal financial administration.

This amendment was not called up.

ARTICLE XVIII-A, SECTION 23-B (NEW).

The committee of the whole proceeded to the consideration of the proposed new section 23-B of article XVIII-A.

The secretary read the proposed new section submitted in writing by the Bureau of Municipal Research of Philadelphia, as follows:

Section 23-B (New).

The general assembly shall have power to create a municipal finance commission with authority to regulate and supervise the finances and accounts of all municipalities in the commonwealth; and such municipal finance commission may be given power to certify to the validity of any or all debts incurred by municipalities, which debts shall, after such lapse of time or such procedure as the general assembly may prescribe, be binding debts of the municipalities and be forever incontestable in any and all courts in this commonwealth.

The CHAIRMAN. It seems to the chair that this is covered by an amendment already adopted creating a state board. In that case this also will be dropped.

Mr. PEPPER. Mr. Chairman: I am not perfectly sure about that. May it be passed for the moment?

Mr. McCORMICK. Mr. Chairman: I do not think this is necessary. I think this same thing could be established by legislation.

The CHAIRMAN. I think you are right about that, Mr. McCormick. I think it is already covered.

Mr. PEPPER. Mr. Chairman: It is a different proposition from the other.

The CHAIRMAN. This will be worked out under the other amendment, and would be part of the other. We certainly do not want separate municipal agencies around the state.

Mr. PEPPER. Mr. Chairman: I am not prepared to advocate this.

The CHAIRMAN. There being no motion to adopt the proposed amendment, it will be dropped

ARTICLE III, SECTION 7-A.

The CHAIRMAN. The secretary calls attention to the fact that it is necessary now to consider, after adopting this article, section 7-A of article III, as found on pages 14 and 15 of the calendar.

Mr. FISHER. Mr. Chairman: Unless my calendar is entirely wrong, we have already acted upon the subject on that page.

Mr. ENGLISH. Mr. Chairman: I think all of the section were passed on except section 7-A on page 15.

Mr. PEPPER. Mr. Chairman: That is right.

Mr. ENGLISH. Mr. Chairman: I remember suggesting that possibly action ought to be suspended on that section until we had disposed of the various municipal questions.

The CHAIRMAN. The question then is on the adoption of this suggested amendment.

The secretary read the amendment submitted by Samuel B. Scott, Esq., representing the Constitutional Club, Philadelphia, at public hearings April 7, 1920, as follows:

Strike out the present section and substitute the following:

Section 7-A. *No law shall be held to be a local or special law which operates equally upon every member of a class. The general assembly may classify municipalities but shall not create more than seven classes of cities, counties or school districts, nor more than five classes of any other municipality upon the basis of population. The general assembly may classify municipalities upon the basis of the coincidence of special regulations, including the basis of the coincidence of boundaries of different municipalities, or other relations between them requiring special regulation.*

No law shall be held to be local or special which, being otherwise of a general nature, does not go into effect as regards any particular municipality until affirmatively adopted by the authorities or people of said municipality as provided by law.

Mr. ENGLISH. Mr. Chairman: I move that the amendment be adopted.

Mr. PEPPER. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. PEPPER. Mr. Chairman: I listened with great attention to Mr. Scott's argument, which impressed me as a very able one, and I have come to the conclusion that he understood the subject and that I did not and that it was best to take his suggestion.

Mr. ENGLISH. Mr. Chairman: I think an examination of the very able brief, No. 40, that was submitted to us on the subject of special legislation, will convince every member of the Commission of not only the advisability but of the necessity of the adoption of some such section as this.

The CHAIRMAN. Is Mr. English convinced?

Mr. ENGLISH. Mr. Chairman: Yes.

On the question recurring,

Will the committee agree to the motion?

It was agreed to.

ARTICLE XVIII-B. (NEW).

The committee of the whole proceeded to the consideration of the proposed new article XVIII-B.

The secretary read the proposed new article submitted in writing by Clinton Rogers Woodruff, Esq., honorary secretary, National Municipal League, Philadelphia, as follows:

ARTICLE XVIII-B (NEW).
MUNICIPAL HOME RULE.

Section 1. Incorporation and Organization.

Provision shall be made by a general law for the incorporation of cities and boroughs, and by a general law for the organization and government of cities and boroughs which do not adopt laws or charters in accordance with the provisions of sections 2 and 3 of this article.

Section 2. Optional Laws.

Laws may be enacted affecting the organization and government of cities and boroughs, which shall become effective in any city or borough only when submitted to the electors thereof and approved by a majority of those voting thereon.

Section 3. City Charters.

Any city may frame and adopt a charter for its own government in the following manner: The legislative authority of the city may by a two-thirds vote of its members, and, upon the petition of ten per cent. of the qualified electors, shall forthwith provide by ordinance for the submission to the electors of the question, "Shall a commission be chosen to frame a charter?" The ordinance shall require that question be submitted to the electors at the next regular municipal election if one shall occur not less than sixty or more than one hundred and twenty days after its passage, otherwise at a special election to be called and held within the time aforesaid; the ballot containing such question shall also contain the names of candidates for members of the proposed commission, but without party designation.

Such candidates shall be nominated by petition which shall be signed by not less than two per cent. of the qualified electors, and be filed with the election authorities at least thirty days before such election; provided, that in no case shall the signatures of more than one thousand qualified electors be required for the nomination of any candidate. If a majority of the electors voting on the question of choosing a commission shall vote in the affirmative, then the fifteen candidates receiving the highest number of votes (or if the legislative authority of the state provides by general law for the election of such commissioners by means of a preferential ballot or proportional representation or both, then the fifteen chosen in the manner required by such general law) shall constitute the charter commission and shall proceed to frame a charter.

Any charter so framed shall be submitted to the qualified electors of the city at an election to be held at a time to be determined by the charter commission, which shall be at least thirty days subsequent to its completion and distribution among the electors and not more than one year from the date of the election of the charter commission. Alternative provisions may also be submitted to be voted upon separately. The commission shall make provision for the distribution of copies of the proposed charter and of any alternative provisions to the qualified electors of the city not less than thirty days before the election at which it is voted them. Such proposed charter and such alternative provisions as are approved by a majority of the electors voting thereon shall become the organic law of such city at such time as may be fixed therein, and shall supersede any existing charter and all laws affecting the organization and government of such city which are in conflict therewith. Within thirty days after its approval the election authorities shall certify a copy of such charter to the secretary of state, who shall file the same as a public record in his office and the same shall be published as an appendix to the session laws enacted by the legislature.

Section 4. Amendments.

Amendments to any such charter may be framed and submitted by a charter commission in the same manner as provided in section 3 for framing and adopting a charter. Amendments may also be proposed by two-thirds of the legislative authority of the city, or by petition of ten per cent. of the electors; and any such amendment, after due public hearing before such legislative authority, shall be submitted at a regular or special election as is provided for the submission of the question of choosing a charter commission. Copies of all proposed amendments shall be sent to the qualified electors. Any such amendments approved by the majority of the electors voting thereon shall become a part of the charter of the city at the time fixed in the amendment and shall be certified to and filed and published by the secretary of state as in the case of a charter.

Section 5 Powers.

Each city shall have and is hereby granted the authority to exercise all powers relating to municipal affairs; and no enumeration of powers in this constitution or any law shall be deemed to limit or restrict the general grant of authority hereby conferred; but this grant of authority shall not be deemed to limit or restrict the power of the legislature, in matters relating to state affairs, to enact general laws applicable alike to all cities of the state.

The following shall be deemed to be a part of the powers conferred upon cities by this section:

(a) To levy, assess and collect taxes and to borrow money within the limits prescribed by general law, and to levy and collect special assessments for benefits conferred;

(b) To furnish all local public services, to purchase, hire, construct, own, maintain and operate or lease local public utilities, to acquire, by condemnation or otherwise, within or without the corporate limits, property necessary for any such purposes, subject to restrictions imposed by general law for the protection of other communities, and to grant local public utility franchises and regulate the exercise thereof;

(c) To make local public improvements and to acquire, by condemnation or otherwise, property within its corporate limits necessary for such improvements, and

also to acquire an excess over that needed for any such improvement, and to sell or lease such excess properly with restrictions, in order to protect and preserve the improvement;

(d) To issue and sell bonds on the security of any such excess property, or any public utility owned by the city, or of the revenue thereof, or of both, including in the case of a public utility, if deemed desirable by the city, a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate such utility;

(e) To organize and administer public schools and libraries subject to the general laws establishing a standard of education for the state;

(f) To adopt and enforce within its limits local police, sanitary and other similar regulations not in conflict with general laws.

Section 6. Reports.

General laws may be passed requiring reports from cities as to their transactions and financial conditions, and providing for the examination of vouchers by state officials, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities.

Section 7. Election.

All elections and submissions of questions provided for in this article, or in any charter or law adopted in accordance herewith, shall be conducted by the election authorities provided by general law.

Section 8. Consolidation of City and County.

Any city of one hundred thousand population or over (this number may be varied to suit local conditions in the several states), upon vote of the electors taken in the manner provided by general law, may be organized as a distinct county, and any such city and county may in its municipal charter provide for the consolidation of the county, city and all other local authorities in one system of municipal government, in which provision shall be made for the exercise of all powers and duties vested in the several local authorities. Any such consolidated city and county government shall also have the same powers to levy taxes and to borrow money as were vested in the several local authorities before consolidation.

The CHAIRMAN. Mr. English, does all of article 18-B fall as the result of your home rule amendment?

Mr. ENGLISH. Mr. Chairman: That is my understanding.

The CHAIRMAN. Then the chair rules that all amendments suggested on pages 116, 117, 118 and 119 are dropped because they are covered by the amendment already adopted and proposed by Mr. English. Article XVIII-B will therefore be dropped.

ARTICLE XVIII-C (NEW).

The committee of the whole proceeded to the consideration of the proposed new article XVIII-C.

The secretary read the proposed new article submitted in writing by Hon. James H. Reed, Commissioner, as follows:

AMENDMENT TO FEDERAL CONSTITUTION.

Section 1.

Whenever an amendment to the constitution of the United States shall be proposed by the congress of the United States, the legislature, before taking action upon such amendment, shall submit the same to the voters of the state at the next general or municipal election for the purpose of obtaining the judgment of the said voters upon the advisability of said amendment.

Mr. REED. Mr. Chairman: I move that the amendment be adopted.

Mr. FISHER. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

The CHAIRMAN. We are going to amend the constitution of the United States now.

Mr. REED. Mr. Chairman: That is not an amendment to the federal constitution, it is a provision that I find has been mooted, possibly adopted by this time, in Massachusetts. It has been suggested in New York, it has been recommended in two or three other states, and the sole purpose which I had in drawing it, at least in

trying to draw it, was to avoid any idea of the referendum, and that before the amendment is submitted and passed on by the legislature they should give the people a chance to vote on it. We have had two or three important amendments in this country to the federal constitution upon which the people had no opportunity to vote, and in many cases against the opposition of the people the legislatures have voted for the amendment without any consideration by the people. I cannot say any more than I have said before, except that it is a serious proposition that if you want to amend the constitution of Pennsylvania you have to pass the amendment through two legislatures and then submit it to a vote of the people, whereas it is possible to amend the constitution of the United States by a vote of twenty-six per cent. of the legislature of Pennsylvania. In other words, fifty per cent. of the house of representatives being present, really twenty-six per cent. of those present can pass the amendment; and fifty per cent. of the senate being present the twenty-six per cent. of them can pass the amendment, and so on in all the states. The importance of a federal amendment is manifestly greater than that of an amendment to the constitution of Pennsylvania, and I only hope that the other members of the commission will see it as I do. I do not expect to convince the chair.

Mr. FISHER. Mr. Chairman: May I ask Judge Reed whether or not there is any possible way whereby amendments which have been certified to the governor might be submitted to popular vote without awaiting the session of the legislature? One of the principal objections raised to this provision was the great delay that might occur in case of emergency. It might be two years in our state, because we have biennial sessions, before action can be had on a Federal amendment. There might be an emergency that requires more speedy action. This seems to contemplate that when an amendment is certified to the governor it shall rest there until the legislature meets and after the meeting there shall be a popular vote and then the legislature may act upon it. Now, is there any way of expediting that process?

Mr. REED. Mr. Chairman: I hope not. I do not think any amendment to the constitution ought to be expedited. Let me read to you from a leading paper: "Under the fifth article of the constitution as it now stands it would be possible to effect almost any change in our government in the course of a few days, under the impulse of temporary and unreasoning and undeliberative passion. All that would be necessary would be for both Houses of Congress, under suspension of the rules, to rush through the proposed amendment, get the President's signature, send it to the states and get the legislatures of three-fourths of them to ratify it; and the thing would be done. Nor is that the worst of it. Such snap judgment could be taken by the smallest minority of the representatives of the people," as I have tried to demonstrate.

The CHAIRMAN. That must have been written by some of our brewery friends.

Mr. REED. Mr. Chairman: It is good sense. Sometimes even a brewery man can have good sense. It was not written by a brewery friend, but by a lawyer. It might have been a lawyer for a brewery. I think there was a time when all of us were glad to be lawyers for brewers, because they paid. So far as works on constitutional law, such as story, speaking of the importance of a draft of an amendment

to the federal constitution, for years that was considered as a very serious matter, but today apparently it is drawn with as little ceremony as an ordinance that is drawn by city councils. These proposed amendments affect the lives and business of the people, and it is significant that the last two or three amendments, the last two anyhow, and the one that now proposed and in progress of passing, do enter into the local affairs of the people, and yet in no case have they been given the opportunity to pass on them. That is all I can say.

Mr. THORPE. Mr. Chairman: My sympathies are with Judge Reed on this proposition. I have somewhat changed my mind since we have had it up before. With your permission I will submit one or two ideas. Since the war there is a great tendency in the country to centralize. Now this centralization is admirable and all that, but there is a function of government which should be upon the people as well as the state, and upon the state as well as the people. This could be nothing more than a flat negation expressing what is the thought at the present moment. I think some of our later amendments—would question their validity, some of our later amendments can be questioned as to their actual, real and fundamental value for the purpose of popularr government. I do not care to trespass upon the time of my colleagues here at all, but as a serious expression of a great people in a commonwealth, concerning a proposition, any proposition, is it not worth while to get that opinion on a great subject of this kind and let the legislature act accordingly? It does avoid a direct referendum and it has a tendency to express a word of warning to those who would centralize government in the United States at the expense of public sentiment.

Mr. FOX. Mr. Chairman: I am sorry I cannot agree with Judge Reed, although I very often do; but I am opposed to making any change in the method of amending the constitution of the United States. While Judge Reed disavows any such purpose in discussing the method that has been in vogue for one hundred and forty years, and never until now have we seen fit to question it; and I think Judge Reed, in common with many other people, has a mistaken impression as to whether or not the people have expressed their views on the adoption of the eighteenth amendment. I recall when the Governor and the legislature was elected, and the man who now graces the position of Governor of this Commonwealth took his stand boldly in favor of that amendment when he was first nominated, and he was elected by one of the largest majorities that any governor has received in the commonwealth of Pennsylvania. So that I feel that we did have, so far as the amendment was concerned, an expression of the popular will, and I believe that practically most of the amendments have been adopted by the representatives of the people in the legislature with ample notice of the fact that the amendments were likely to be considered, and it does seem to me that it will be a mistake for Pennsylvania to make this departure.

Mr. PEPPER. Mr. Chairman: When this matter came before the commission before I had no special opinion in regard to the questions which it involved, never having had occasion to study them. But it so happened that after the question was mooted here the Secretary of the commission and I were asked to act on behalf of a civic organization which was pressing before the Supreme Court of the

United States the proposition that the vote of the legislature of Ohio ratifying the eighteenth amendment of the constitution had been effective for that purpose and should not be disturbed by a referendum to the people of Ohio under the terms of the constitution of that state. The question has been studied, briefs written, and the case argued in the Supreme Court of the United States, where it is now awaiting decision, and all I should like to say is that the more I study the proposition the more convinced I am that the question involved is really the one upon which Judge Fox has laid his finger, that it is really a question of attempting to amend the constitution of the United States by indirect method instead of by direct method.

We are very insistent, Mr. Chairman, that elections shall be uniform. That means that all the people who are elected to a representative body like our legislature shall be chosen according to the same method. We greatly deplore a system of elections which involves a different method of choosing men in some districts from that which prevails in others. It is equally regretable, it seems to me, that there should be a lack of uniformity as between the states in the method of changing the federal constitution. It is extremely desirable that the federal constitution with its amendments at any particular time should have been adopted by processes uniform as between states. Please observe that in the fifth article of the constitution of the United States there is a careful discrimination between the two methods of ratification of amendments proposed to the federal constitution: One of them is the submission of the proposed amendment to the legislatures of the states for legislative retification. The other is the submission of them to popular vote in each state through the method of constitutional convention called by Congress, in each of the states, the members being elected on the issue of ratification or no ratification. The choice between those two methods of ratification of proposed amendments to the constitution of the United States is by the fifth article delegated to the Congress of the United States. Now if the Congress of the United States is given a discretionary authority by the fifth article to determine whether the ratification by the states shall be legislative or shall be by popular vote, and if the Congress of the United States decides that it shall submit the proposed amendment to ratification by the legislature, it certainly is inadvisable that it should be within the power of the state to nulify the congressional choice and submit the matter to popular vote in some states when in other states the mandate of Congress is being pursued. If it is true, as Judge Reed says, that there is need for popular action in this matter, then the way to get at it is not the indirect way of disturbing uniformity of action between the states, but to amend the fifth article of the constitution of the United States so as to make it mandatory upon Congress to submit the amendments, not to the legislative action of the several states, but to popular action through constitutional conventions. I earnestly beg members of the commission to consider how unfortunate it is to introduce a lack of uniformity into the methods of state action upon suggested Federal amendments. I know it will be said that this is only a method of giving advice to the legislature as to how they shall act, but I submit, Mr. Chairman, that the advice given by the people to their legislature is either merely the kind of advice which carries no weight with it and is not informing to the legis-

lature, or else it is the serious expression of the will of the electors of the state, in which case no matter how your document is phrased that expression of will must be controlling with the legislature. If it is not controlling with the legislature you are setting up an elaborate machinery to find out what the will of the people is, to indicate that will to their representatives and then expecting the representatives to exercise independent judgment as to whether they will register the popular will. It is a bad thing in any government. I hope we shall not sanction this. It is a great mistake, it seems to me, to submit questions to the people to ascertain their will unless when ascertained their will is to be effective. If it is to be made effective then you are substituting for legislative action popular action, and if you are doing that you are transcending the provisions of the constitution of the United States, for you are superseding discretion which by the constitution is vested in Congress.

On the question recurring,

Will the committee agree to the motion?

It was not agreed to.

ARTICLE XVIII-D (NEW).

The committee of the whole proceeded to the consideration of the proposed new article XVIII-D.

The secretary read the proposed new article submitted in writing by Albert H. Votaw, secretary, Pennsylvania Prison Society, Philadelphia, Pa., as follows:

Section 1. Penal System to Be Provided For.

The general assembly shall provide for the maintenance and support of an efficient system of penal and correctional institutions and agencies, whereby all prisoners, convicted of any crime, felony, or misdemeanor, shall, subject to conditions of probation and parole as may be determined by law, be employed in useful and profitable labor, and shall receive such treatment and instruction as shall tend to qualify them to become useful citizens. The prisoners, thus employed, shall receive compensation equal to their earnings, a deduction to be made not to exceed the cost of trial and maintenance.

Section 2. Department of Administration and Supervision.

The general assembly shall create such administrative and supervisory department, or departments, or agencies, as may be necessary to carry out efficiently the provisions of this article.

The CHAIRMAN. The understanding of the chair is that this has already been covered by an amendment offered by Judge Gordon and adopted, and unless there is a motion to adopt this proposed amendment as a substitute for that already adopted, this will be dropped.

Mr. FISHER. Mr. Chairman: May I ask for information? Where is the provision that was suggested by Judge Gordon that would cover the same subject as is here proposed? If the chair refers to the one which was eliminated by Mrs. Miller and myself, I would say it is entirely different from this proposition here.

The CHAIRMAN. Then the chair misapprehends. It seems to me that the central thought of that is the same as the central thought of this. It is the same thought, the same idea.

Mr. FISHER. Mr. Chairman: I should like if we could embody the thought of this suggestion in the second paragraph at least, and it seems to me that there might be some harmonizing of provisions of the section submitted by Judge Gordon with those contained in the first paragraph of this proposed section. To get the matter before the commission I move the adoption of this article.

The CHAIRMAN. As a substitute for the section proposed by Judge Gordon?

Mr. FISHER. Mr. Chairman: With the understanding that the first paragraph here be harmonized with the other by the committee on style when it takes the matter up for consideration.

Mr. MILLER. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

The CHAIRMAN. There are agencies in the state covering the second section, and when we get the prisoners in the western penitentiary, get all the prisoners in the state, in the penitentiary at Bellefonte, you have machinery to run the whole penitentiary system of the state.

Mr. FISHER. Mr. Chairman: I will confess I have not given this particular provision the consideration which it deserves.

I had in mind the creation of some sort of department by the government that would have charge of all such subjects, and I think perhaps this proposed article might open the way for legislation of that kind. I may be entirely mistaken about it, but it was for the larger thought that I wanted to bring the subject before the commission. I am sorry that there are so many of the members absent. I do not want to press it, and I have no personal interest in it, but I think the idea is well worth considering when we are redrafting the constitution. I defer to the chair in this particular matter. This would be no serious interference with the existing conditions. I am perfectly willing to withdraw the motion.

The CHAIRMAN. The committee on style can consider this in connection with Judge Gordon's amendment. It can do no harm to adopt this, and the committee on style can determine whether or not it is out of harmony.

On the question recurring,

Will the committee agree to the motion?

It was agreed to.

ARTICLE XVIII-E. (NEW).

The committee of the whole proceeded to the consideration of the proposed new article XVIII-E.

The secretary read the proposed new article submitted in writing by Kenneth L. M. Pray, secretary, Public Charities Association of Pennsylvania, at public hearings April 13, 1920, as follows:

Section 1.

The general assembly shall provide for the maintenance and support of a thorough and efficient system of institutions and agencies whereby all those residents of the commonwealth who, by reason of physical or mental infirmity or other misfortune, are unable to care for and support themselves, may receive proper care, relief and treatment, and whereby every available means may be employed to prevent such infirmatives and misfortunes.

Section 2.

The general assembly shall create or designate a department or departments of the state and municipal government, whereby the provisions of this article shall be carried into full force and effect, and whereby all institutions, associations and corporations in this commonwealth which undertake to provide care, relief and treatment for persons unable to care for or support themselves, shall be visited, inspected, supervised and subjected to such direction and control as shall be authorized by general law.

Mr. McCORMICK. Mr. Chairman: I would like to move the adoption of this article to get it before the commission. I was not present unfortunately when these matters were presented at the public

hearings. I would like very much to get the opinion of the other members of the commission on this article.

Mr. PEPPER. Mr. Chairman: I second the motion.

On the question,

Will the Committee agree to the motion?

Mr. PEPPER. Mr. Chairman: I merely would like to state in answer to Mr. McCormick's question, that this article has been formulated in an effort to recognize the existence on the part of the state of the same duty respecting the care of the classes of dependents here specified as the state recognizes in the domain of education. It is not an undertaking by the state directly to care for all classes of dependents, but is an expression by the state of its obligation to see to it that their care is provided for, that the interest of caring for the dependents in a community is an interest coordinate with the educational interest, that the thing that moves us to assume responsibility in the one case should move us to assume it in the other. That statement seems to be a sound one and the provision for making it effective is similar to the one of which Senator Fisher has just spoken in connection with the subject of penology.

Mr. McCORMICK. Mr. Chairman: I am in sympathy with the object of the article as outlined by Mr. Pepper, but I notice that in section 2 the legislature "shall create or designate a department or departments of the state and municipal government, whereby the provisions of this article shall be carried into full force and effect, whereby all institutions, associations and corporations in this commonwealth which undertake to provide care, relief and treatment for persons unable to care for or support themselves, shall be visited, inspected, supervised and subjected to such direction and control as shall be authorized by general law." In other words, it more or less makes mandatory the state supervision and inspecting and visiting of a great number of private institutions like associated aid societies, charitable organizations, and I do not know whether that is necessary or proper. My own mind is not made up. I am in sympathy with carrying out the general lines in requiring the education of the people of this commonwealth, and yet the state does not inspect the private schools or colleges in the state, and I fear under this section 2 it might be looked upon as compulsory and every private charitable organization of any character would have to be looked into and inspected, and so on, and controlled, and I do not know whether that is the proper thing to do or not. My mind is open, but I rather doubt it. Therefore, I would like to approve the principle, but not make it quite as exacting.

Mr. REED. Mr. Chairman: In the educational provision which we passed this morning we provided this system for the care of those who are handicapped by mental or physical infirmities. Is there anything in this provision that the legislature cannot do now? It seems to me that it is an unnecessary provision.

Mr. THORPE. Mr. Chairman: I had occasion not long ago to look into this matter with some friends who are attempting to ameliorate the condition of the feeble-minded. Among the trustees on the committee there was a man who was qualified to speak, but who was in Europe and could not appear before the commission when it had its hearings. It seems to me, Mr. Chairman, you cannot go too far in anticipating the evils which flow over the state incident to the state of the feeble-minded, causing crime, poverty, thriftlessness of all

kinds, and even if this does repeat something that is in the constitution I think there should be an article to show that we are up to the times. I think we fail in our duty if we do not put it in. If we want to drop it out, let somebody else drop it out. We should show that we are alive to the very serious problem incident to the cause of the feeble-minded.

Mr. FISHER. Mr. Chairman: I want to register my voice in favor of the adoption of this article. I am not sure it is in exactly the form it ought to take finally, but the thought expressed here is one that ought to receive very earnest consideration in our final report. The principle involved is just the same as that involved in the article that we just adopted tentatively at the suggestion of Judge Gordon. It is true, as Judge Reed says, the legislative power of the state can create a department if they want to on this subject, but they have not exercised their powers to create a unified system of supervision of the subjects here proposed. This makes it mandatory on them and calls it to their attention. I believe it will result in good.

Mr. McCORMICK. Mr. Chairman: I made the motion, and I withdraw my motion and move that section 1 be adopted and section 2 be referred to the committee on style to see whether it conflicts with any other article in the constitution. I understand there is a general article referring to state agencies which might take care of section 2.

Mr. PEPPER. Mr. Chairman: Would it meet your thought, I ask Mr. McCormick through you, whether it would meet his thought to adopt section 1 as it stands and to adopt section 2 in principle and refer it for consideration of detail to the committee on style, because, as has been pointed out, it may be that the powers herein granted may be exercises by the executive agencies for which we have provided at an earlier stage of our deliberations. It seems to me we might adopt section 1 as it stands and section 2 in principle.

Mr. McCORMICK. Mr. Chairman: I accept that if the principle does not include compulsory inspection of all classes of private charities of every nature.

Mr. REED. Mr. Chairman: What is the objection to that?

Mr. McCORMICK. Is it not done in the educational system, like the Hill School, and the academies all through the commonwealth; they are not being inspected. Is that a proper provision? I would like to hear it discussed.

Mr. PEPPER. Mr. Chairman: I think there is a great difference. I think that it is true that the Lord helps those who help themselves, but He leaves to us sometimes the task of helping those who cannot help themselves, and where you have a class of people who cannot help themselves, the necessities for public inspection rise to their height. In the case of the Hill School and similar institutions there is not much danger of abuse. The enlightened families of the boys who are there are the visitors and inspectors. Mr. Chairman, in the case of educational institutions there ought to be more inspection than there is, and I am quite clear in the case of dependents you cannot overdo the matter of conferring upon central authority the right of visitation. I do hope we shall approve that general principle and then leave the question of machinery to be worked out in its relation to the machinery that we have already set up.

Mr. REED. Mr. Chairman: Does this interfere with the board of state charities, or can they function under this provision?

The CHAIRMAN. I do not know whether they have agencies to do it or not. As they are now constituted, the state board of public charities, of course, is a body that serves without pay. They have some few officials, but I do not know whether they have anybody to do this. That is a detail for the committee on style to say what the machinery of the state is.

On the question recurring,

Will the committee agree to the motion?

It was agreed to.

ARTICLE XVIII-F (NEW).

The committee of the whole proceeded to the consideration of the proposed new article XVIII-F.

The secretary read the proposed new article submitted in writing by A. B. Sperry, of Pittsburgh, Pa., as follows:

Section 1.

Any city, borough or township may insure property located within its corporate limits against loss by fire and write other ordinary and conservative forms of insurance other than life, health and accident insurance under such jurisdiction of the commissioner of insurance of the commonwealth as said commissioner exercises over insurance companies operating in this commonwealth, and may also, subject to said commissioner's approval, reinsure with any other city, borough or township or with any insurance company. The profits from said municipal insurance business in excess of such surplus or reserves for the protection of policy-holders as may be required by the insurance commissioners of the commonwealth shall be the property of the city, borough or township and be used for its purposes. It shall be the duty of the corporate authorities of cities, boroughs and townships engaging in the business of insurance as herein provided to give the benefit to owners of property in such cities, borough and townships of as low rates for insurance as are consistent with sound and profitable insurance practice and to so develop the fire departments and other improvements of said cities, boroughs and townships as to reduce the cost of insurance by reducing the danger of loss.

Section 2.

Any city, borough or township may issue and sell its bonds to provide a fund of such amount as may be stipulated by the bonds of any other school district of the commonwealth and bonds so purchased may be resold.

This article was not called up.

ARTICLE XVIII-G (NEW).

The committee of the whole proceeded to the consideration of the proposed new article XVIII-G.

The secretary read the proposed new article submitted in writing by A. B. Sperry, of Pittsburgh, Pa., as follows:

Section 1.

Any school district may insure the life of any resident or taxpayer within its corporate limits and may also engage in the business of health and accident insurance for the benefit of its residents and taxpayers under such jurisdiction of the commissioner of insurance of the commonwealth as said commissioner exercises over insurance companies operating in this commonwealth and may also with such commissioner's approval re-insure with any other school district or with any insurance company. The profits from such insurance business in excess of such surplus or reserves for the protection of policy-holders as may be required by the said commissioner of insurance are to become the property of the school district and may be used for any of its lawful purposes with a view to reducing taxation or may be used to provide pensions for the school teachers.

Section 2.

Any school district may issue and sell its bonds to provide a fund of such amount as may be stipulated by the commissioner of insurance of the commonwealth for paying policy-holders or beneficiaries and meeting such other expenses as may be properly incurred under the provisions hereof, the indebtedness incurred for insurance purposes and the bonds issued therefor to be under the same safeguards and limitations as other municipal indebtedness and bonds. Surplus or reserve funds

accumulated from or acquired for insurance purposes or operations may be invested in new or old bonds of the school district or in commissioner of insurance of the commonwealth for paying losses on insurance policies of said city, borough or township and meeting such other expenses as may be properly incurred under the provisions hereof, the indebtedness incurred for insurance purposes and the bonds issued therefor to be under the same safeguards and limitations as other municipal indebtedness and bonds. Surplus or reserve funds accumulated from or acquired for insurance purposes or operations may be invested in new or old bonds of the city, borough or township or bonds of any other city, borough or township of this commonwealth and bonds so purchased may be resold.

This article was not called up.

ARTICLE IV, SECTION 21-A (NEW).

The CHAIRMAN. The only undisposed of matter on the calendar is on page 31, section 21-A, which was passed after some discussion on it, and Mr. Pinchot now desires to offer a substitute.

Mr. PINCHOT. Mr. Chairman: I want to offer a substitute which I think I may declare has the approval of Judge Reed. If so, it makes a most fitting conclusion. I would like to suggest this amendment, which I believe has been distributed to the members of the commission.

The secretary read the section and the suggested substitute as follows:

Section 21-A (New).

No employe or officer of any department of the state government or of either branch of the legislature shall be in any way interested in any contract with the commonwealth of Pennsylvania or any department thereof, and any contract in which this provision is violated shall be void.

Substitute the following:

No member of the general assembly and no officer or employe of a department of the state government shall be interested in any contract with the commonwealth of Pennsylvania or in furnishing thereto any material or supplies.

Mr. REED. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. FISHER. Mr. Chairman: May I ask Mr. Pinchot whether or not that would interfere with a stockholder of a utility company that supplies some public institution or state-owned institution with service?

Mr. PINCHOT. Mr. Chairman: I should suppose not, but the thing was drawn sufficiently general so that it would require legislative interpretation, of course, to go into effect. At least that was my purpose. It was merely a declaration of principle.

The CHAIRMAN. It would require legislation to carry it out.

On the question recurring,

Will the committee agree to the motion?

It was agreed to.

ARTICLE XVIII, SECTION 2.

Mr. PINCHOT. Mr. Chairman: May I trespass upon the time of the commission long enough to bring up one other matter? I was away unfortunately when article XVIII dealing with how the constitution should be amended was passed upon, and I observe in section 2, which reads as follows: "Whenever two-thirds of the members elected to each branch of the general assembly shall think it necessary," and so forth. In other words, this provides for a two-

thirds concurrence of all members elected to the general assembly instead of as at present a majority. I should like to amend the article by substituting for the word "two-thirds" in the first line, the words "a majority."

Mr. THORPE. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. ENGLISH. Mr. Chairman: As I understand it the purpose of the motion is to provide that upon a vote of a majority of both Houses of the general assembly the question may be submitted to the people as to whether or not there will be a constitutional convention. From that point of view it is possibly all right to submit the question on a simple majority vote rather than requiring a two-thirds vote, which, of course, is the proper machinery where amendments are to be submitted.

On the question recurring,

Will the committee agree to the motion?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE I, SECTION 26-A (NEW).

Mr. THORPE. Mr. Chairman: There are two matters that might be overlooked and which are on page 5 of the calendar, at the bottom of the page. There is a suggested amendment by the Honorable John S. Riling which the chair said was withdrawn. I move Mr. Chairman that that matter of withdrawing it, if it be on motion, be reconsidered; if not, that this matter be referred to the committee on style to take into consideration.

The secretary read the proposed new section suggested by Hon. John S. Rilling, and presented by the chair at public hearings April 7, 1920, as follows:

Section 26-A (New).

The natural resources of our state, the common inheritence of our people, should, with a due regard for the present and future, be conserved and consumed as a public use subject to such reasonable regulations and restrictions as the general assembly may impose upon any proprietary rights thereto.

The CHAIRMAN. If there is no objection the matter will go to the committee on style.

ARTICLE XVII, SECTION 8.

Mr. THORPE. Mr. Chairman: There is one other matter. The Bishop of Pittsburgh sent a printed form and wrote letters to some of the members of the commission suggesting an amendment to section 8. Out of respect to the bishop and what he represents, I think we should consider it. It is a proposed amendment to be added to section 8 of article XVII. May I have it read?

The CHAIRMAN. It may be read.

The secretary read the suggested amendment as follows:

Provided, however, that exception may be made in behalf of ministers of religious bodies who are regularly and duly ordained, vouched for by the highest authority

recognized in their respective denominations, and registered in the office of the secretary of state in Harrisburg or other officer appointed by the governor.

Mr. THORPE. Mr. Chairman: The point is that persons engaged in holy calling shall be furthered in their good work by the commonwealth. I think this should be considered by the commission.

Mr. PEPPER. It is the free pass proposition?

Mr. THORPE. It comes under the free pass proposition and refers to article XVIII, section 8, which forbids the granting of free passes. This amendment provides for an exception for the clergy.

Mr. REED. Mr. Chairman: The answer to that is that under the interstate commerce act clergymen are exempt, and before the railroads went into the hands of the administration they received passes, and I take it the interstate commerce act governs these things and not the Constitution of Pennsylvania.

The CHAIRMAN. It will be referred to the committee on style for consideration.

Are there any other matters to come before the commission?

The chair wishes to express his personal appreciation of the faithfulness of the members of the commission in remaining here until this very extensive calendar has been cleaned up.

ARTICLE I, SECTION 3 (NEW).

Mr. PEPPER. Mr. Chairman: I hope I shall not forfeit your regard if I call your attention to the fact that a memorandum shows there is one matter that has been introduced that we have not disposed of.

The CHAIRMAN. What is it?

Mr. PEPPER. Mr. Chairman: It seems that at yesterday's session, or perhaps at a previous session, a proposal was made to insert as a new section 3 in article I a declaration with respect to the police powers as follows.

The secretary read the section as follows:

Section 3 (New). Powers of Government.

The power of all free governments extends to the protection of the health, morals and welfare of all citizens, the regulation of the conditions of labor and employment, and the determination of the minimum wage for women and minors.

The CHAIRMAN. That will be referred to the committee on style. It was not on the calendar. The chair has a number of suggestions that came to him, and if we open the door now it would not be fair to consider one proposition that is not on the calendar and not consider others. I have said to everybody if they had a new proposition it would be considered by the committee on style. We have drawn the powers of the committee on style broad enough to do that and let the committee on style make suggestions.

Mr. PEPPER. Mr. Chairman: May I ask that this be so referred?

The CHAIRMAN. It will be referred to the committee on style.

Mr. FISHER. Mr. Chairman: Does this complete the calendar?

The CHAIRMAN. It is the chair's understanding that the calendar is now completed with the exception of the Scranton mine-cave situation, which has gone over with the resolution of the commission that it should go over until after the commission has had an opportunity to visit Scranton.

COMMITTEE OF THE WHOLE RISES.

The committee of the whole then rose and the chairman reported progress.

The CHAIRMAN. The committee on style is asked to meet the chairman immediately after adjournment.

TIME OF NEXT MEETING.

Mr. FISHER. Mr. Chairman: I move that when the commission adjourns today it adjourns to meet at the call of the chairman.

Mr. THORPE. Mr. Chairman: I second the motion.

The motion was agreed to.

The CHAIRMAN. As the chair views the situation now, there will be no occasion to call the commission together until the fall. It will take considerable time for the committee on style to consider and get this draft shaped up. That will be at least three weeks. I should think it will not be before the latter part of September or the early part of October that the commission will be called together again. I have given the matter some thought in order to answer some of the members.

ADJOURNMENT.

Mr. McCORMICK. Mr. Chairman: I move that the commission do now adjourn.

Mrs. MILLER. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 4.20 o'clock P. M., the commission adjourned to meet at the call of the chairman.

Superior Court Room,
Scranton, Pa.,
Thursday, October 7, 1920.

The Commission met at 2 o'clock P. M.

The Chairman, William I. Shaffer, in the Chair.

The CHAIRMAN. The hour fixed for the meeting of the commission having arrived, the commission will be in order.

ROLL CALL.

The CHAIRMAN. The secretary will now call the roll.

The roll was called by the secretary and was as follows:

PRESENT—13.

Alter, Carson, Connelly, Fisher, Fox, Kelly, Miller, Munce, Reed, Stackpole, Stevens, Thorpe, Schaffer (Chairman).

ABSENT—12.

Cuyler, English, Gordon, McCormick, Pepper, Perrine, Pinchot, Smith, Sulzberger, Tyson, Voll, Warburton.

The CHAIRMAN. A quorum of the commission being present, the commission will proceed with its business.

JOURNAL APPROVED

Mrs. MILLER. Mr. Chairman: I move that the reading of the journal be dispensed with and the journal approved.

Mr. MUNCE. Mr. Chairman: I second the motion.

The motion was agreed to.

EXECUTIVE STENOGRAPHER'S SALARY INCREASED.

The CHAIRMAN. Before proceeding with the hearing on the question we have come here to be enlightened upon, there is a matter that, in the routine running of the commission, should be acted upon and I recognize Senator Fisher, chairman of the committee on organization and rules.

Mr. FISHER. Mr. Chairman: In view of the extra work Miss Duffey, the executive stenographer, has had to do, I move that her salary be increased to two hundred dollars a month, beginning the first of October.

Mr. FOX. Mr. Chairman: I second the motion.

The CHAIRMAN. As this motion appropriates money, the yeas and nays will be taken.

The yeas and nays were taken and were as follows:

YEAS—13.

Alter, Carson, Connelly, Fisher, Fox, Kelly, Miller, Munce, Reed, Stackpole, Stevens, Thorpe, Schaffer (Chairman).

NAYS—0.

PUBLIC HEARING.

The CHAIRMAN. Has any member of the commission anything to bring before the commission?

If not, we are prepared to hear anything that may be advanced to us on the question which brings about our visit here to-day. I may say to every one here, and I think you will understand the spirit in which it is said, we are going to leave, a number of us, a special committee of the commission, for some intensive work and study on various provisions of the constitutional draft, and while we do not want to cut anybody's speech short this afternoon, we want to hear every one who desires to bring anything to our attention. I should like to suggest that after what we have seen to-day, because we have seen the physical aspects of things with our eyes, it is not well to further stress that proposition. What the commission would like to have discussed primarily before it is, What suggestions have any of you, or all of you, as to the working out of the problem in its constitutional aspect?

The following persons addressed the commission on the subject of the relief of the Scranton mine-cave situation:

Hon. Alexander T. Connell, mayor of Scranton.

Charles B. Little, Esq., chairman of the Legislative Bureau of the Scranton Board of Trade and Legislative Branch of the General Citizens Committee on Mine-cave Problems.

Mark T. Edgar, Esq., general secretary of the Scranton Board of Trade.

A. L. Williams, Esq., general counsel for the Susquehanna Collieries Company and special counsel for the Lehigh Coal Company and the Wilkes-Barre Coal Company.

James H. Torry, counsel for the Hudson Coal Company.

W. L. Connell, Esq., representing the coal operators.

Rev. George J. Lucas, rector of St. Patrick's Church, West Scranton.

Hon. H. A. Knapp, representing the Delaware, Lackawanna and Western Railroad Company.

Philip V. Matters, Esq., representing the Scranton Surface Protective Association.

ADJOURNMENT.

Mrs. MILLER. Mr. Chairman. I move that the commission do now adjourn to meet at the call of the chairman.

Mr. MUNCE. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 4.40 o'clock P. M., the commission adjourned to meet at the call of the Chairman.

Senate Chamber,
Tuesday, November 9, 1920.

The Commission met at 10 o'clock A. M.

The chairman, William I. Schaffer, in the chair.

The CHAIRMAN. The hour fixed for the meeting of the commission having arrived, the commission will be in order.

ROLL CALL.

The CHAIRMAN. The secretary will now call the roll.

The roll was called by the secretary and was as follows:

PRESENT—19.

Cuyler, English, Fisher, Fox, Gordon, Kelly, McCormick, Miller, Munce, Perrine, Pinchot, Reed, Stackpole, Stevens, Sulzberger, Thorpe, Tyson, Voll, Schaffer (Chairman).

ABSENT—6.

Alter, Carson, Connelly, Pepper, Smith, Warburton.

The CHAIRMAN. A quorum of the commission being present, the commission will proceed with its business.

JOURNAL APPROVED.

Mrs. MILLER. Mr. Chairman: I move that the reading of the journal be dispensed with and the journal approved.

Mr. PINCHOT. Mr. Chairman: I second the motion.

The motion was agreed to.

CHANGE IN COMMITTEE ON STYLE.

The CHAIRMAN. Because of the inability of Judge Reed to serve on the committee on style, Mr. Alter was appointed in his place.

REPORT OF THE COMMITTEE ON STYLE.

The CHAIRMAN. There has been laid on the desk of each member the report of the committee on style, and the thought of the chair is that we shall go into committee of the whole and consider the report of the committee on style. Is there any objection?

The Chair hears none, and will therefore go into the committee of the whole to consider the report of the committee on style.

COMMITTEE OF THE WHOLE.

The commission then resolved itself into the committee of the whole, William I. Schaffer, Chairman.

The CHAIRMAN. If some member of the committee will move and another member second the motion that the report of the committee on style be adopted, it will not bind any one to the motion, and it will not be necessary to have a motion for the adoption of every section.

Mr. STACKPOLE. Mr. Chairman: I move that the report of the committee on style be adopted and that it be taken up by sections where there are any changes.

Mr. PERRINE. Mr. Chairman: I second the motion.

The motion was agreed to.

The CHAIRMAN. The chair has the report of the committee on style before him, and has marked the pages on which changes occur. The chair will indicate the page and the change, and then, after consideration and such debate as may be required, the question will be put by the chair to adopt the report of the committee on style in each instance where there is a section changed.

ARTICLE 1, SECTION 1.

The committee of the whole proceeded to the consideration of section 1 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

NATURAL RIGHTS OF MANKIND.

1 Section 1. All men are born equally free and independent, and have certain
2 inherent and indefeasible rights, among which are those of enjoying and defend-
3 ing life and liberty, of acquiring, possessing and protecting property and reputa-
4 tion, and of pursuing their own happiness. No person shall be deprived of life,
5 liberty or property without due process of law.

NOTE.

Source: Article I, section 1:

That the general, great and essential principles of liberty and free government may be recognized and unalterably established, we declare that—

Section 1. All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

Changes in Substance: The final clause following the word "happiness" is added to make this section uniform with the 14th amendment to the constitution of the United States, which forbids a state to "deprive any person of life, liberty or property without due process of law." The declaration of the present constitution is probably equivalent to that of the federal constitution, but since the supreme court of the United States determines finally the invalidity of that kind of legislation which both declarations are intended to prevent, the commission recommend that the language of the two instruments should be identical.

Changes in Style: None:

On the question,

Will the committee adopt the section as reported?

Mr. REED. Mr. Chairman: It may be all right to move that now. I was going to suggest that as we consider that first section, we finally take a vote on whether the first section shall be adopted as it is now or whether it can be amended. The amendments are not very serious and it might be advisable to let the Declaration of Rights stand as it is to-day, after considering the whole section.

The CHAIRMAN. As I understand the motion of Judge Reed, it is that the section be adopted without these words in the section. Is that motion seconded?

The chair hears no second.

Mr. REED. Mr. Chairman: I do not think you understand it. I thought we could consider each section, and then afterwards I was going to move that the present Declaration of Rights be adopted as it stood in the present constitution.

The CHAIRMAN. That would be an omnibus motion.

Mr. REED. Yes, sir. I move that this section be adopted as it is in the present constitution.

Mr. THORPE. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE 1, SECTION 5-A

The committe of the whole proceeded to the consideration of section 5-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

RIGHT TO VOTE.

1 Section 5-A. The right to vote and to hold office in the commonwealth shall
2 not be denied on account of race, color or sex.

NOTE.

Source: This is entirely new matter. So far as the right to vote is concerned, the section brings the constitution of the commonwealth into conformity with the constitution of the United States.

The commission also recommend the provision with respect to holding office, believing that it is a logical consequence of the extension of the franchise to women.

Special Note to the commission by the committee on style.

As adopted by the commission this section ended with the words "and all laws to the contrary now existing shall be construed to be amended in accordance herewith." We have omitted these words because the supreme court of the United States has held that a constitutional amendment prohibiting a qualification on the right to vote automatically acts to strike out such qualifications from all existing statutes and constitutions. (See Neal v. Delaware, 103 U. S. 370; Guinn v. United States, 238 U. S. 347; Myers v. Anderson, 238 U. S. 368; United States v. Mosley, 258 U. S. 383.)

On the question,

Will the committee adopt the section as reported?

Mr. REED. Mr. Chairman: That is not the only amendment you have made. You have changed the right to hold office, and it does not seem to me that that has any place in the Declaration of Rights.

The CHAIRMAN. That has already been adopted by the commission.

Mr. REED. Mr. Chairman: It does not seem to so appear in the calendar. The right to hold office depends on whether you get votes enough. I do not think it is important enough to put in the Declarations of Rights.

The CHAIRMAN. That has already been adopted by the commission. It can be striken out on a motion, just as these words can be striken out.

Mr. REED. I hate to differ with the chairman, but the first report that was put up to the committee on style shows article 1, section 5-A, "The right to vote and to hold office in this commonwealth shall not be denied on account of race, color or sex and all laws to the contrary now existing shall be construed to be amended in accordance herewith." I think the right to hold office was not in there as we adopted the report during our last meeting.

The CHAIRMAN. The secretary can enlighten us on that question.

Mr. REED. That is to say it was printed in the book.

The SECRETARY. As passed at the session on May 11th, according to the record of the secretary, this section read as follows: "The right to vote and to hold office in this commonwealth shall not be denied on account of race, color or sex and all laws to the contrary now existing shall be construed to be amended in accordance herewith." The right to vote and hold office in this commonwealth—

Mr. REED. I am reading from the report you sent out, the Secretary sent out, of the committee on style, of which I was temporarily a member, and that was your report of the committee.

The SECRETARY. I understand that I was desired to read the section as it had been adopted by the commission at its meeting, or as the result of the series of meetings, beginning with the week of May 11th. I am reading from a compilation made for the committee on style for its first meeting by the secretary from the records, which compilation is dated June 23, 1920.

Mr. REED. Now, I do not find it in there.

The SECRETARY. I am reading from page 24. The difficulty can be straightened out. On the left-hand page of the record prepared by the secretary for the committee on style, dated June 23, 1920, is placed the section as it was adopted by the commission.

Mr. REED. Where is there anything in there about holding office?

The SECRETARY. On the left-hand side are placed certain suggestions of the secretary to the committee on style, but it is only the right-hand or even-numbered pages of that record that contain the action of the commission.

On the question recurring,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE 1, SECTION 10.

The committee of the whole proceeded to the consideration of section 10 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

CRIMINAL INFORMATION. TWICE IN JEOPARDY.

Section 10. No person shall, for any indictable offense, be proceeded against criminally by information, except in cases arising in the land or naval forces or in the militia when in actual service, in time of war or public danger, or by leave of the court for oppression or misdemeanor in office. No person shall, for the same offense, be twice put in jeopardy of life or limb.

NOTE.

Source: Article I, section 10:

"No person shall, for any indictable offense, be proceeded against criminally by information, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger, or by leave of the court for oppression or misdemeanor in office. No person shall, for the same offense, be twice put in jeopardy of life or limb, nor shall private property be taken or applied to public use, without authority of law and without just compensation being first made or secured."

Changes in Substance: None.

Changes in Style: The final provision with respect to the taking of property is transferred to section 10-A of this article. It should not, as in the present constitution, be placed in a section which deals otherwise only with the rights of accused persons.

On the question,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE 1, SECTION 10-A.

The committee of the whole proceeded to the consideration of section 10-A as reported by the committee on style.

The secretary read the section, note and recommendations of the committee on style as follows:

EMINENT DOMAIN, INJURY OR DESTRUCTION OF PROPERTY.

Section 10-A. Private property shall not be taken, injured or destroyed, or applied to public use, without authority of law and without just compensation being first made or secured.

A corporation, association, individual or municipality invested with the privilege of taking private property for public use shall make just compensation for property taken, injured or destroyed. The compensation shall be paid or secured before such taking, injury or destruction. No law shall deprive a person of an appeal from a preliminary assessment of damages, and, on appeal, either party may have the damages assessed by a jury according to the course of the common law.

NOTE.

Source: (1) Part of article 1, section 10:

"* * * nor shall private property be taken or applied to public use, without authority of law and without just compensation being first made or secured.

(2) Article XVI, section 8:

"Municipal and other corporations and individuals invested with the privilege of taking private property for public use shall make just compensation for property taken, injured or destroyed by the construction or

enlargement of their works, highways or improvements, which compensation shall be paid or secured before such taking, injury or destruction. The general assembly is hereby prohibited from depriving any person of an appeal from any preliminary assessment of damages against any such corporations or individuals made by viewers or otherwise; and the amount of such damages in all cases of appeal shall on the demand of either party be determined by a jury according to the course of the common law."

Changes in Substance: None.

Changes in Style: In the first paragraph, which embodies the provision from article I, section 10-A, of the present constitution, no changes have been made except that this final provision of article I, section 10, of the present constitution has been made a separate section for the reasons stated in the note to article I, section 10, as proposed.

The provisions of article XVI, section 8, of the present constitution, have been transferred to this article because we believe that all fundamental rules protecting private property should be expressed on one section in the bill of rights.

On the question,

Will the committee adopt the section as reported?

The CHAIRMAN. The notes explain what has been done here; that is to say, the main provisions of the constitution have been grouped in the precise language of the constitution of 1874 with minor changes in style in one section.

Mr. SULZBERGER. Mr. Chairman: I would like to ask whether it has been definitely determined whether you number the sections 10-A-B-C, and so on, or whether that will not complicate matters in the comprehension of a large number of people.

The CHAIRMAN. That ought to be taken care of in the report of the committee on style when the final report comes to be made. They will all be numbered, if the recommendation of the committee on style is adopted, as they are numbered in the present constitution. They will be article 1, section 1, and so on and they will run in regular order.

Mr. SULZBERGER. There will be no A, B, C?

The CHAIRMAN. No sir; it was simply necessary in order to keep the calendar straight.

The CHAIRMAN. If the amendment prevails in accordance with the recommendation of the committee on style, the section will be as it is in the constitution of 1870.

On the question recurring,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE 1, SECTION 13.

The committee of the whole proceeded to the consideration of section 13 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

BAIL. FINES. PUNISHMENTS. CONDITIONS OF IMPRISONMENT.

1 Section 13. Excessive bail shall not be required nor excessive fines imposed
2 nor cruel punishments inflicted; and the conditions of imprisonment shall
3 always be such as to promote the physical, mental and moral welfare of the
4 prisoner.

NOTE.

Source: Article I, section 13:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted."

Changes in Substance: The final provision is new, expressing what the commission believe to be an important fundamental principle.

Changes in Style: None.

Special Note to the commission by the committee on style.

Recommendation of Change in Substance.

We recommend that the original language of the section be restored, striking out the words "and the conditions of imprisonment shall always be such as to promote the physical, mental and moral welfare of the prisoner."

The principle expressed by these words is sufficiently set forth in article XVIII-E, section 1-A, as proposed.

On the question,

Will the committee adopt the section as reported?

It was adopted.

Mr. REED. Mr. Chairman. Now you are through with the Declaration of Rights, and for the purpose of bringing the question up, I would move that we substitute for the report of the committee the Bill of Rights as it stands in the present constitution.

The CHAIRMAN. The chair hears no second to the motion, and therefore the motion falls.

ARTICLE II, SECTION 1.

The committee of the whole proceeded to the consideration of section 1 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

LEGISLATIVE POWER.

1 Section 1. The legislative power of the commonwealth shall be vested in a
2 general assembly which shall consist of a senate and a house of representatives.

NOTE.

Source: Article II, section 1:

"The legislative power of this commonwealth shall be vested in a general assembly which shall consist of a senate and a house of representatives."

Changes in Substance: None.

Changes in Style: "This" has been changed to "the," following the commission's rules of style.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE II, SECTION 1-A.

The committee of the whole proceeded to the consideration of section 1-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

LEGISLATIVE APPORTIONMENT.

1 Section 1-A. At the first session of the general assembly after this constitu-
2 tion becomes effective and at the first session of the general assembly after each
3 United States decennial census, the state shall be divided by law into senatorial
4 and representative districts.

NOTE.

Source: Article II, section 18:

"The general assembly at its first session after the adoption of this constitution, and immediately after each United States decennial census, shall apportion the state into senatorial and representative districts agreeably to the provisions of the two next preceding sections."

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

On the question,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE II, SECTION 1-B.

The committee of the whole proceeded to the consideration of section 1-B as reported by the committee on style.

The secretary, read the section, notes and recommendations of the committee on style as follows:

SENATORIAL DISTRICTS.

1 Section 1-B. The state shall be divided into fifty senatorial districts of com-
2 pact and contiguous territory as nearly equal in population as may be, and each
3 district shall be entitled to elect one senator. The senatorial ratio shall be
4 obtained by dividing the whole population of the state, as ascertained by the
5 most recent United States decennial census, by the number fifty. Each county
6 containing one or more ratios of population shall be entitled to one senator
7 for each ratio, and to an additional senator for an excess of population exceed-
8 ing three-fifths of a ratio. No county shall form a separate district unless it
9 shall contain four-fifths of a ratio, except where the adjoining counties are
10 each entitled to one or more senators, when such county may be assigned a
11 senator on less than four-fifths and exceeding one-half of a ratio. No county
12 shall be divided unless entitled to two or more senators. No city or county
13 shall be entitled to separate representation exceeding one-sixth of the whole
14 number of senators. No ward, borough or township shall be divided in the
15 formation of a district.

NOTE.

Source: Article II, section 16:

"The state shall be divided into fifty senatorial districts of compact and contiguous territory as nearly equal in population as may be, and each district shall be entitled to elect one senator. Each county containing one or more ratios of population shall be entitled to one senator for each ratio, and to an additional senator for a surplus of population exceeding three-fifths of a ratio, but no county shall form a separate district unless it shall contain four-fifths of a ratio, except where the adjoining counties are each entitled to one or more senators, when such county may be assigned a senator on less than four-fifths and exceeding one-half of a ratio; and no county shall be divided unless entitled to two or more senators. No city or county shall be entitled to separate representation exceeding one-sixth of the whole number of senators. No ward, borough or township shall be divided in the formation of a district. The senatorial ratio shall be ascertained by dividing the whole population of the state by the number of fifty."

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

On the question,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE II, SECTION 1-C.

The committee of the whole proceeded to the consideration of section 1-C as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

REPRESENTATIVE DISTRICTS.

1 Section 1-C. The members of the house of representatives shall be appor-
2 tioned among the several counties, on a ratio obtained by dividing the popula-
3 tion of the state as ascertained by the most recent United States decennial
4 census by the number two hundred. A county containing less than five ratios
5 shall have one representative for each full ratio, and an additional representa-
6 tive when the excess exceeds half a ratio; but each county shall have at least
7 one representative. A county containing five ratios or more shall have one
8 representative for each full ratio. A city containing a population equal to a
9 ratio shall elect separately its proportion of the representatives allotted to the
10 county in which it is located. A city entitled to more than four representatives
11 and a county having over one hundred thousand inhabitants shall be divided
12 into districts of compact and contiguous territory. A district shall elect its
13 proportion of representatives according to its population, but no district shall
14 elect more than four representatives.

NOTE.

Source: Article II, section 17:

"The members of the house of representatives shall be apportionad among the several counties, on a ratio obtained by dividing the population of the state as ascertained by the most recent United States census by two hundred. Every county containing less than five ratios shall have one representative for every full ratio, and an additional representative when the surplus exceeds half a ratio; but each county shall have at least one representative. Every county containing five ratios or more shall have one representative for every full ratio. Every city containing a population equal to a ratio shall elect separately its proportion of the representatives allotted to the county in which it is located. Every city entitled to more than four representatives, and every county having over one hundred thousand inhabitants shall be divided into districts of compact and contiguous territory, each district to elect its proportion of representatives according to its population, but no district shall elect more than four representatives.

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE II, SECTION 1-D.

The committee of the whole proceeded to the consideration of section 1-D as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

QUALIFICATION OF MEMBERS.

1 Section 1-D. A senator shall be at least twenty-five years of age and a rep-
2 resentative shall be at least twenty-one years of age. Each shall have been a
3 citizen of the commonwealth and a resident of the state for four years and
4 a resident of his district for one year next before his election, unless absent
5 on the public business of the United States, of the state government or of a
6 municipality of the commonwealth. He shall reside in his district during his
7 term of service.

NOTE.

Source: Article II, section 5:

"Senators shall be at least twenty-five years of age and representatives twenty-one years of age. They shall have been citizens and inhabitants of the state four years, and inhabitants of their respective districts one year next before their election (unless absent on the public business of the United States or of this state), and shall reside in their respective districts during their term of service."

Changes in Substance: None.

Clarifying Amendment: Under the present constitution it is not clear whether the absence on public business referred to in section 5 includes not only public business of the state government, but also public business of a municipality. For instance, if a man had been for some years in Europe investigating highway conditions for the city of Pittsburgh, would he be eligible to the general assembly? The proposed form answers this question in the affirmative.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

The CHAIRMAN. The words that have been added are the words on line 4, "unless absent on the public business of the United States, of the state government or of a municipality of the commonwealth."

On the question recurring,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE II, SECTION 2.

The committee of the whole proceeded to the consideration of section 2 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

ELECTION OF MEMBERS. TERMS.

1 Section 2. Members of the general assembly shall be chosen at the general
2 election. Their terms of service shall begin on the first day of December after
3 their election. Senators shall serve for four years and representatives for two
4 years. When a vacancy shall occur in either house, the presiding officer thereof
5 shall issue a writ of election to fill such vacancy for the remainder of the term.

NOTE.

Source: (1) Article II, section 2:

"Members of the general assembly shall be chosen at the general election every second year. Their term of service shall begin on the first day of December next after their election. Whenever a vacancy shall occur in either house, the presiding officer thereof shall issue a writ of election to fill such vacancy for the remainder of the term."

(2) Article II, section 3:

"Senators shall be elected for the term of four years and representatives for the term of two years."

Changes in Substance: None.

Changes in Style: The provisions of section 3 of the present constitution in regard to length of service have been incorporated in this section, so that all matters pertaining to terms shall be treated in one section.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE II, SECTION 2-A.

The committee of the whole proceeded to the consideration of section 2-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

COMPENSATION OF MEMBERS.

1 Section 2-A. The members of the general assembly shall receive salary and
2 mileage for regular and special sessions as prescribed by law and no other com-
3 pensation, whether for services upon committee or otherwise. No member of

4 the general assembly shall, during the term for which he has been elected,
5 receive an increase of salary or mileage allowance under a law passed during
6 such term.

NOTE.

Source: Article II, section 8:

"The members of the general assembly shall receive such salary and mileage for regular and special sessions as shall be fixed by law, and no other compensation whatever, whether for services upon committee or otherwise. No member of either house shall during the term for which he may have been elected, receive any increase of salary, or mileage, under any law passed during such term."

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

On the question,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE II, SECTION 2-B.

The committee of the whole proceeded to the consideration of section 2-B as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

PRIVILEGES OF MEMBERS.

1 Section 2-B. A member of the general assembly shall be privileged from
2 arrest during attendance at the sessions thereof and in going to and returning
3 from the same, except in cases of treason, felony, violation of his oath of office
4 and breach or surety of the peace. For a speech or debate in the general
5 assembly he shall not be questioned in any other place.

NOTE.

Source: Article II, section 15:

"The members of the general assembly shall in all cases, except treason, felony, violation of their oath of office, and breach or surety of the peace be privileged from arrest during their attendance at the sessions of their respective houses and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place."

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

On the question,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE II, SECTION 4.

The committee of the whole proceeded to the consideration of section 4 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

TIMES OF SESSIONS.

1 Section 4. The general assembly shall meet at twelve o'clock, noon, on the
2 first Tuesday of January in each odd-numbered year and at other times when
3 convened by the governor. It shall hold no adjourned annual session.

NOTE.

Source: Article II, section 4:

"The general assembly shall meet at twelve o'clock, noon, on the first Tuesday of January every second year, and at other times when convened by the governor, but shall hold no adjourned annual session after the year

one thousand eight hundred and seventy-eight. In case of a vacancy in the office of United States senator from this commonwealth, in a recess between sessions, the governor shall convene the two houses, by proclamation on notice not exceeding sixty days, to fill the same."

Changes in Substance: The provisions in the present constitution following the words "annual session" have been omitted as obsolete.

Changes in Style: "Every second year" has been changed to "in each odd-numbered year" for the sake of exactness.

On the question,

Will the committee adopt the section as reported?

The CHAIRMAN. These changes are made for the sake of uniformity.

On the question recurring,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE II, SECTION 4-A.

The committee of the whole proceeded to the consideration of section 4-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

QUORUM.

1 Section 4-A. In each house a majority of the members shall constitute a
2 quorum. A smaller number may adjourn from day to day and compel the
3 attendance of absent members.

NOTE.

Source: Article II, section 10:

"A majority of each house shall constitute a quorum, but a smaller number may adjourn from day to day and compel the attendance of absent members."

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE II, SECTION 4-B.

The committee of the whole proceeded to the consideration of section 4-B as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

POWERS OF EACH HOUSE.

1 Section 4-B. Each house shall have power to make its rules of procedure, to
2 judge of the election and qualifications of its members, to punish for contempt or
3 disorderly behavior in its presence, to enforce obedience to its processes, to pro-
4 tect its members against violence, offers of bribes or private solicitation, and, by
5 a vote of two-thirds of the members, to expel a member, but not a second time for
6 the same cause, and shall have all other powers necessary for the legislature of a
7 free commonwealth. A member expelled for corruption shall not thereafter be
8 eligible to either house. Punishment for contempt or disorderly behavior shall
9 not bar an indictment for the same offense.

NOTE.

Source: (1) Article II, section 11:

"Each house shall have power to determine the rules of its proceedings and punish its members or other persons for contempt or disorderly behavior in its presence, to enforce obedience to its process, to protect its members against

violence or offers of bribes or private solicitations, and, with the concurrence of two-thirds, to expel a member, but not a second time for the same cause, and shall have all other powers necessary for the legislature of a free state. A member expelled for corruption shall not thereafter be eligible to either house, and punishment for contempt or disorderly behavior shall not bar an indictment for the same offense."

(2) Part of article II, section 9:

"* * * Each house shall * * * judge of the election and qualifications of its members."

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

On the question,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE II, SECTION 9.

The committee of the whole proceeded to the consideration of section 9 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

CHOICE OF OFFICERS.

1 Section 9. The senate shall, at the beginning and close of each regular session
2 and at other necessary times, elect one of its members as president pro tempore.
3 The house of representatives shall elect one of its members as speaker. Each
4 house shall choose its other officers.

NOTE.

Source: Article II, section 9:

"The senate shall, at the beginning and close of each regular session and at such other times as may be necessary, elect one of its members president pro tempore, who shall perform the duties of the lieutenant governor, in any case of absence or disability of that officer, and whenever the said office of lieutenant governor shall be vacant. The house of representatives shall elect one of its members as speaker. Each house shall choose its other officers, and shall judge of the election and qualification of its members."

Changes in Substance: None.

Changes in Style: (1) The definition of the duties of the president pro tempore of the senate has been omitted because covered by article IV, section 14, as proposed. It will be seen from the note to that section that the commission recommend that the president pro tempore of the senate should be able to succeed to the powers and duties of the lieutenant governor except to the right to become governor.

(2) The provisions of the final sentence have been transferred to section 4-B of this article.

On the question,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE II, SECTION 9-A.

The committee of the whole proceeded to the consideration of section 9-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

OFFICERS AND EMPLOYES.

1 Section 9-A. The officers and employes of each house shall have active
2 duties and shall be selected and compensated in pursuance of laws prescribing
3 their number, duties and compensation.

NOTE.

Source: Article III, section 10:

"The general assembly shall prescribe by law the number, duties and compensation of the officers and employes of each house, and no payment shall be made from the state treasury, or be in any way authorized, to any person, except to an acting officer or employe elected or appointed in pursuance of law."

Clarifying Amendments: The language of the present constitution is ambiguous. Strictly interpreted, it would prevent paying money out of the state treasury to any one except to officers and employes of the two houses of the general assembly. The commission have re-worded the section on the assumption that it is intended to prevent two things: (a) the appointment of a particular person by special law to a position in either house; (2) the appointment of any payment of salaries to inactive officers or employes of either house.

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

On the question,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE II, SECTION 12.

The committee of the whole proceeded to the consideration of section 12 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

JOURNALS.

1 Section 12. Each house shall keep a journal of its proceedings, and shall
2 publish so much thereof as shall not require secrecy. At the request of two
3 members, the yeas and nays on a question shall be entered on the journal.

NOTE.

Source: Article II, section 12:

"Each house shall keep a journal of its proceedings and from time to time publish the same, except such parts as require secrecy, and the yeas and nays of the members on any question shall, at the desire of any two of them, be entered on the journal."

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

On the question,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE II, SECTION 13.

The committee of the whole proceeded to the consideration of section 13 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

SESSIONS TO BE OPEN.

1 Section 13. The sessions of each house and of committees of the whole shall
2 be open unless the business ought to be kept secret.

NOTE.

Source: Article II, section 13:

"The sessions of each house and of committees of the whole shall be open, unless when the business is such as ought to be kept secret."

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

On the question,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE II, SECTION 14.

The committee of the whole proceeded to the consideration of section 14 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

ADJOURNMENT.

1 Section 14. Neither house shall, without the consent of the other, adjourn
2 for more than three days, or to a place other than that in which the two houses
3 shall be sitting.

NOTE.

Source: Article II, section 14:

"Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting."

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

On the question,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE III, SECTION 1.

The committee of the whole proceeded to the consideration of section 1 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

HOW GENERAL ASSEMBLY MAY ACT.

1 Section 1. Laws shall be enacted by bill only.

NOTE.

Source: Part of article III, section 1:

"No law shall be passed except by bill. * * *."

Changes in Substance: None.

Changes in Style: The last part of the section, referring to alteration and amendment of bills, has been transferred to section 5 of this article.

In the language proposed, the commission's rules of style have been followed.

On the question,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE III, SECTION 1-B.

The committee of the whole proceeded to the consideration of section 1-B as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

BILLS FOR RAISING REVENUE.

1 Section 1-B. Bills for raising revenue shall originate in the house of repre-
2 sentatives. The senate may propose amendments.

NOTE.

Source: Article III, section 14:

"All bills for raising revenue shall originate in the house of representatives, but the senate may propose amendments as in other bills."

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE III, SECTION 2.

The committee of the whole proceeded to the consideration of section 2 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

PRINTING AND REFERENCE OF BILLS.

1 Section 2. Before consideration, a bill shall be referred to a committee,
2 returned therefrom, and printed for the use of the members.

NOTE.

Source: Article III, section 2:

"No bill shall be considered unless referred to a committee, returned therefrom, and printed for the use of the members."

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE III, SECTION 2-A.

The committee of the whole proceeded to the consideration of section 2-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

MEMBER INTERESTED IN BILL NOT TO VOTE.

1 Section 2-A. A member of the general assembly who has a private interest
2 in a measure or bill shall disclose the fact to the house of which he is a member,
3 and shall not vote thereon.

NOTE.

Source: Article III, section 33:

"A member who has a personal or private interest in any measure or bill proposed or pending before the general assembly shall disclose the fact to the house of which he is a member, and shall not vote thereon."

Changes in Substance: None.

Clarifying Amendment: The words "personal or" have been omitted because they do not help to express the plain meaning of the section. The distinction sought to be made is between public and private interests. A personal interest, as, for instance, a personal interest in a particular hospital seeking an appropriation, is not objectionable, and it was not the intent of the section that a member should expose such a personal interest to the house of which he is a member.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

Mr. REED. Mr. Chairman: I do not see why a member should not express a personal interest that he has. It seems to me that the

illustration given there is one that shows that he has a personal interest in a hospital, while it might not be a private interest, he ought to disclose it. I can not see, Mr. Chairman, what the objection is as it stands. It gives double security. It says that a member who has any personal interest in it shall disclose it. You strike out the word "personal." I don't see any harm in it as it was.

Mr. McCORMICK. Mr. Chairman: Under the hospital appropriations, would they not be voted upon in a class, and would that practically preclude every member of the legislature from voting for that class?

On the question recurring,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE III, SECTION 5.

The committee of the whole proceeded to the consideration of section 5 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

AMENDMENTS AND CONFERENCE COMMITTEE.

1 Section 5. An amendment to a bill shall be printed for the use of the mem-
2 bers before the final vote is taken on the bill. An amendment by one house
3 shall be concurred in by the other and a report of a committee of conference
4 shall be adopted by either house only by the vote of a majority of the members
5 taken by yeas and nays. The names of the members voting for and of those
6 voting against such amendment or report shall be entered on the journal. A
7 bill shall not be so altered or amended on its passage through either house as
8 to change its original purpose.

NOTE.

Source: (1) Part of article III, section 4:

"* * * all amendments made thereto shall be printed for the use of the members before the final vote is taken on the bill."

(2) Article III, section 5:

"No amendment to bills by one house shall be concurred in by the other, except by the vote of a majority of the members elected thereto, taken by yeas and nays, and the names of those voting for and against recorded upon the journal thereof; and reports of committees of conference shall be adopted in either house only by the vote of a majority of the members elected thereto, taken by yeas and nays, and the names of those voting recorded upon the journals."

(3) Part of article III, section 1:

"* * * no bill shall be so altered or amended, on its passage through either house, as to change its original purpose."

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE III, SECTION 5-C.

The committee of the whole proceeded to the consideration of section 5-C as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

NOTICE OF LOCAL OR SPECIAL BILLS.

1 Section 5-C. At least thirty days before the introduction of a local or special
2 bill, except a bill only for the repeal of a local or special law, notice of the in-
3 tention to introduce the same shall be published in the locality where the matter

4 or thing to be affected shall be situated. No such bill shall be finally acted on
5 by either house until the evidence of such notice having been published has been
6 exhibited therein.

NOTE.

Source: Article III, section 8:

"No local or special bill shall be passed unless notice of the intention to apply therefore shall have been published in the locality where the matter or the thing to be affected may be situated, which notice shall be at least thirty days prior to the introduction into the general assembly of such bill and in the manner to be provided by law; the evidence of such notice having been published shall be exhibited in the general assembly before such act shall be passed."

Changes in Substance: The words on line 2, "except a bill only for the repeal of a local or special law," are new. The commission regard the requirement in the present constitution, that notice of the intention to introduce a bill for the repeal of a local or special law shall be published in the locality affected, as unnecessary, and as most burdensome when the general assembly is asked to adopt a general revision or compilation of the laws on a particular subject including the repeal of all prior enactments, whether local or general, relating to the subject.

Changes in Style: The section has been re-written so that the acts mentioned are stated in the order in which they are required to be done.

On the question,

Will the committee adopt the section as reported?

Mr. SULZBERGER. Mr. Chairman: I think that the words, "except a bill only for the repeal of a local or special law," should be striken out, because it seems to contemplate a bill general in its scope which will have the effect of repealing one or more local or special laws, but it leaves out of account the fact that a bill for the repeal of a local or special law may also be introduced; and why the locality or city interested should not be notified of a fact which threatens to interfere with an interest that has property vested, I do not see. The effect of striking it out could be cured, however, by inserting at the end of the section, "Notice shall not be required of the intention to introduce a general bill for the repeal of a local or special law." That seems to me to be an objection to the phraseology of the committee, and if there is any good reason for it, I would like to hear it. I make that motion to amend the section.

The CHAIRMAN. Judge Sulzberger's motion, as the chair understands it, is that the section be amended by adding at the end the words that he has just read, and also by striking out the words, "except a bill only for the repeal of a local or special law." Is that motion seconded?

Mr. FOX. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the committee adopt the section as amended?

It was adopted.

ARTICLE III, SECTION 5-D.

The committee of the whole proceeded to the consideration of section 5-D as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

FINAL PASSAGE OF BILLS.

1 Section 5-D. Before a bill shall be passed, it shall be read at length on
2 three different days in each house; on its final passage the vote shall be taken
3 by yeas and nays; the names of the members voting for and of those voting
4 against shall be entered on the journals and a majority of the members elected
5 to each house shall be recorded thereon as voting in its favor.

NOTE.

Source: Part of article III, section 4:

"Every bill shall be read at length on three different days in each house; * * * and no bill shall become a law, unless on its final passage the vote be taken by yeas and nays, the names of the persons voting for and against the same be entered on the journal, and a majority of the members elected to each house be recorded thereon as voting in its favor."

Changes in Substance: None.

Clarifying Amendment: The statement in the present constitution that "every bill shall be read at length on three different days" means that it must be so read before it can be passed. This is made clear in the proposed section.

Changes in Style: The commission's rules of style have been followed.

On the question,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE III, SECTION 5-E.

The committee of the whole proceeded to the consideration of section 5-E as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

SIGNING OF BILLS BY PRESIDING OFFICERS.

1 Section 5-E. The presiding officer of each house shall, in the presence of the
2 house over which he presides, sign bills and joint resolutions passed by the gen-
3 eral assembly, after their titles have been publicly read immediately before sign-
4 ing. The fact of signing shall be entered on the journal.

NOTE.

Source: Article III, section 9.

"The presiding officer of each house shall, in the presence of the house over which he presides, sign all bills and joint resolutions passed by the general assembly, after their titles have been publicly read immediately before signing; and the fact of signing shall be entered on the journal."

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

On the question,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE III, SECTION 5-F.

The committee of the whole proceeded to the consideration of section 5-F as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

FORM OF LAWS.

1 Section 5-F. A law shall contain only one subject. A general appropriation
2 law, a codification, and a compilation or general revision of statutory law shall
3 be deemed to contain only one subject. The enacting clause of every law shall
4 precede section one thereof.

NOTE.

Source: Part of article III, section 3:

"No bill, except general appropriation bills, shall be passed containing more than one subject * * *."

Changes in Substance: The final sentence contains new matter, inserted so as to produce uniformity in the physical appearance of the statutes.

Clarifying Amendment: The provision that a codification, compilation or general revision shall be deemed to contain only one subject is inserted so as to clear the present uncertainty as to whether or not such laws contain more than one subject.

Changes in Style: The commission's rules of style have been followed.

Special Note to the commission by the committee on style.

As previously adopted by the commission this section was numbered 5-B.

Recommendation of Change in Substance.

Strike out the last sentence.

1 This sentence was inserted by the commission. It is a detail which should
2 have no place in the constitution. The result of its insertion may be to invalidate
3 laws on a purely technical ground.

On the question,

Will the committee adopt the section?

Mr. THORPE. Mr. Chairman: I wonder whether what you are now doing fixes the exact language and meaning of the words. Do I understand that, take for example, "section 1 thereof?" Now, some hypercritical person might say that "section 1" ought to be quoted, or something of that kind.

The CHAIRMAN. The recommendation is to strike that line of the section out.

On the question recurring,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE III, SECTION 5-G.

The committee of the whole proceeded to the consideration of section 5-G as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

TITLE OF LAWS.

1 Section 5-G. The subject of a law shall be clearly expressed in its title.
2 A law may in the body thereof set forth a short title by which it may be cited.
3 A law amending or reviving a law shall set forth in its title the title or the
4 short title of the law affected.

NOTE.

Source: Part of article III, section 3:

"No bill * * * shall be passed containing more than one subject, which shall be clearly expressed in its title."

Changes in Substance: (1) The second sentence is inserted so as to give constitutional sanction to a common and convenient practice.

(2) The purpose of the provisions of the final sentence is to give notice to persons interested of the effect of law upon existing laws specially affected.

Changes in Style: The section is practically new and has been written in accordance with the commission's rules of style.

Special Note to the commission by the committee on style.

As previously adopted by the commission this section was numbered 5-A.

Recommendation For Change in Substance.

Strike out, line 3, "or."

Insert, after "reviving," "or extending."

There is a distinction between an amendment and an extension of an act. The former merges into the act to which it is an amendment, while an extending statute does not merge, but is a separate and independent enactment. Judge Endlich, in his "Interpretation of Statutes," paragraph 196, lays down the rule that an amendment is so much an integral part of the original act and so complete is the merger that the repeal of the amendment does not revive, but carries down the portion of the original act amended, and

vice versa, a repeal of such portion of the original act also repeals the amendment thereto. On the other hand, the supreme court, in Wettling v. Kelley, 201 Pa. 12, decided that an amending act has no effect whatever on a prior act *extending* the provisions of the original act, nor has the repeal of such amending act any effect upon the extending statute.

Because, therefore, of the difference in meanings given by judicial construction to the words "amend" and "extend," the committee recommend that the words "or extending," stricken out by the commission during the week of May 11, be re-inserted.

On the question,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE III, SECTION 6.

The committee of the whole proceeded to the consideration of section 6 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

FORM OF AMENDING, REVIVING OR EXTENDING LAWS.

1 Section 6. A law amending, reviving or extending a law or conferring the
2 provisions thereof shall set forth in full the part of the law affected, and an
3 amending law shall also set forth in full the part of the law affected as amended.

NOTE.

Source: Article III, section 6:

"No law shall be revived, amended, or the provisions thereof extended or conferred, by reference to its title only, but so much thereof as is revived, amended, extended or conferred shall be re-enacted and published at length."

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

On the question,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE III, SECTION 15.

The committee of the whole proceeded to the consideration of section 15 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

BUDGET AND APPROPRIATION BILLS.

1 Section 15. The governor shall submit to the general assembly a budget on or
2 before March 1 of each year in which it shall be in regular session. The budget
3 shall contain a complete plan of proposed appropriations and complete estimates
4 of the revenues and funds available for appropriation for the two ensuing fiscal
5 years, including appropriations for charitable, educational and benevolent pur-
6 poses.
7 When the governor presents the budget to the house of representatives, he shall
8 submit a general appropriation bill containing the proposed appropriations for
9 the fiscal years covered by the budget and may also submit any bill embodying
10 recommendations as to sources of revenue.
11 The presiding officer of the house of representatives shall immediately cause
12 such bills to be introduced.
13 The general assembly may increase, decrease, strike out or otherwise alter any
14 item in the general appropriation bill, or may add new items thereto.
15 Until the general appropriation law has been enacted neither house shall con-
16 sider an appropriation bill other than the general appropriation bill unless the
17 appropriation shall be solely for the immediate needs of the general assembly or
18 unless the governor shall request the general assembly to act upon the bill in
19 advance of the general appropriation bill.

20 After the general appropriation law has been enacted, no appropriation shall
21 be made for any purpose, object or item included therein or in the general appro-
22 priation bill as submitted by the governor, unless the governor shall request the
23 general assembly to pass a bill making such appropriation.
24 The general assembly shall not finally adjourn for ten days after all appropria-
25 tion bills have been presented to the governor.

NOTE.

Source: This is entirely new matter and takes the place of the provisions of article III, section 15, in the present constitution:

"The general appropriation bill shall embrace nothing but appropriation for the ordinary expenses of the executive, legislative and judicial departments of the commonwealth, interest on the public debt and for public schools; all other appropriations shall be made by separate bills, each embracing but one subject."

The commonwealth of Pennsylvania has no budget system. At least forty-four of the states have such a system, either by statute or by constitutional requirement. Its advantages are well known. The executive and legislative branches of the government obtain a fairly accurate estimate of the probable revenues and of the necessary expenses. It thus becomes possible to fit the total appropriations to the total revenue, and to bring the amount of the appropriations into proper relations with each other.

Under the system now prevailing in Pennsylvania, it is almost inevitable that the general assembly should pass appropriation bills aggregating more than the total revenues and that the governor should then be obliged to exercise the power given him by article IV, section 16, by cutting down certain of the appropriations.

The Commission have embodied in the proposed section the following fundamental principles of a practical budget system:

(1) The governor is required to submit to the general assembly at each regular session a plan of proposed appropriations and an estimate of revenues.

(2) The governor is required at the same time to submit a general appropriation bill covering all proposed appropriations and not simply those for the ordinary expenses of government as provided by article III, section 15, of the present constitution.

(3) The general assembly is required to consider this bill immediately and may alter it in any or every particular. Until a general appropriation law has been enacted, the general assembly can not consider any appropriation bill other than the general appropriation bill unless for the needs of the general assembly or at the special request of the governor.

(4) After the general appropriation law has been enacted, the matter covered by it can not again be considered except at the special request of the governor.

(5) The general assembly can not adjourn for ten days after all appropriation bills have been presented to the governor. This makes it impossible for the general assembly to lose its opportunity to pass the bill over the governor's veto. In other words, it provides that both the general assembly and the governor must take a full share of the responsibility for the appropriation laws.

Special Note to the commission by the committee on style.

The suggested re-wording of the section confines this section to the provisions in regard to the budget bill. We have taken out of the section all requirements in respect to laws appropriating money for institutions not under the absolute control of the commonwealth and have placed these provisions under section 17 as revised. There is no alteration in the substantive provisions.

Recommendation of Change in Substance.

Strike out, line 24, "all appropriation bills have"; insert "the general appropriation bill has."

This will enable minor oversights to be corrected in the last days of a session, without requiring the general assembly to postpone adjournment for ten days.

On the question,

Will the committee adopt the section as reported?

Mr. McCORMICK. Mr. Chairman: The change by the committee seems to make this more general than the one adopted by the committee of the whole, and I would like to suggest a slight change, to make it a little more specific, by simply placing again in the section the following words: "and a plan for the distribution of appropriations for charitable, educational and benevolent purposes among the

classes of institutions to be benefited," and to strike out of the section amended lines 5 and 6, "including appropriations for charitable, educational and benevolent purposes," and insert the words of my amendment. I think that probably is the meaning of the section as changed by the committee on style, but they only speak of the general plan of proposed appropriations, and I think it is important under this budget system to have the governor specifically directed to submit a plan of distribution for this peculiar class of corporations and associations which are receiving state aid, and that it would be proper to have him, under his expert advice, require him, to submit such a plan to focus the attention of the people of the state as well as the legislature upon this plan. I think that would be a very helpful thing if it could be inserted, and I therefore move that amendment.

Mrs. MILLER. Mr. Chairman: I second the amendment.

On the question,

Will the committee agree to the amendment?

The CHAIRMAN. The secretary informs me that it is important now that amendments agree with the general style adopted and that this amendment does this.

Mr. REED. Mr. Chairman: I thought our understanding, after much discussion, was that there shall not be in the appropriation bill a distribution to any particular institution, but only to classes. Would not your wording be broad enough to cover a plan of distribution—

Mr. SULZBERGER. Among the classes?

Mr. REED. Among the classes. Would not that be broad enough to cover the specifications of the individual institutions?

Mr. FOX. Mr. Chairman: It seems to me that the section as drafted by the committee on style covers just the point Mr. McCormick has suggested. It says, "The budget shall contain a complete plan of proposed appropriations and complete estimates of the funds available for appropriation for the two ensuing fiscal years, including appropriations for charitable, educational and benevolent purposes." It seems to me if we insert now another plan perhaps we would be guilty of tautology.

The CHAIRMAN. That was the thought of the committee on style.

Mr. McCORMICK. I do not want to confuse this question. I simply want to emphasize the necessity of the governor's submitting a plan of distribution among the classes, in these special classes of beneficiaries, and if in the opinion of the commission, the legal minds that are here, this does it, I withdraw my amendment. I simply wanted to emphasize the fact in this budget system, which I think is a most important one.

Mr. SULZBERGER. Suppose you were to insert in the present section as reported by the committee on line five, the two words, "classes of;" would that effect your purpose?

Mr. McCORMICK. I think it would.

Mr. SULZBERGER. You have got a complete plan in the section already, and practically you require him to tell you what he is giving to the classes.

Mr. McCORMICK. On charitable appopriations.

Mr. SULZBERGER. That I think would preclude the power of the legislature to switch it around to an individual,

Mr. McCORMICK. This amendment was withdrawn and I simply wanted to bring up the question.

Mr. FOX. We might add this as a slight amendment, perhaps to the amendment made by Mr. McCormick, that in lines 5 and 6, after the word "purposes" insert the words, "among the classes of institutions to be benefited."

The CHAIRMAN. Does this meet with your thought. Mr. McCormick?

The CHAIRMAN. Then as I understand it as suggested it is satisfactory to Mr. McCormick.

Mr. REED. It does not belong there anyhow. When you read the sentence, "The budget shall contain a complete plan of proposed appropriations," and the paragraph as Mr. McCormick has amended, and "complete estimates of the revenues and funds available for appropriation—

Mr. McCORMICK. And the appropriation itself.

Mr. REED. No, it says, "the revenues and funds available for appropriations, including appropriations for chartiable institutions."

The CHAIRMAN. Of course, the committee will understand this: this section is the budget section; section seventeen relates to charitable and educational institutions. They will have to be read together when it comes to appropriations for charity. I am not certain—

Mr. REED. I think this real amendment belongs—

Mr. McCORMICK. As I understand it, this complete plan covers appropriations for charitable, benevolent and educational institutions as well as a plan for the complete estimate of revenues, and so on.

Mr. REED. Yes, that is correct; but section seventeen provides how charitable appropriations shall be made as already adopted by the commission.

The CHAIRMAN. The secretary suggests that the last suggestion made would not work harmoniously in that sentence.

Mr. McCORMICK. Could we pass it until after the recess and we have time to try to get together? I move that we postpone this section until after recess.

Mr. FOX. I second the motion.

On the question,

Will the committee agree to the motion?

The CHAIRMAN. The understanding is that Mr. McCormick, after the recess, will suggest an amendment to this section.

There is another amendment to this section which might as well be considered while we are at it. It is to strike out of line tweny-four, "all appropration bills have" and insert "the general appropriation bill has."

On the question,

Will the committee agree to the amendment?

The CHAIRMAN. As it now is, the general assembly shall not finally adjourn until ten days after all appropriation bills have been presented to the governor. The change would make that read "The general assembly shall not finally adjourn for ten days after the general appropriation bill has been presented to the govenor." The thought of the committee on style was that this important thing, the general appropriation bill, might be out of the way, and some small appropriation bill might be necessary to meet an emergency. Then the legislature would have to sit for ten days after that bill has been

passed before it could adjourn. The important thing is that the legislature shall not adjourn until ten days after the general appropriation bill, shall have gone to the govenor.

On the question recurring,

Will the committee agree to the amendment?

It was agreed to.

Mr. REED. I suppose it is ancient history, but on line fourteen we have practically nullified the budget system by providing that the legislature may add new items thereto. I just want to call attention to that as we go along.

The CHAIRMAN. There is no motion before the committee.

On the question recurring,

Will the committee agree to the motion of Mr. McCormick to postpone this section until after recess?

It was agreed to.

ARTICLE III, SECTION 17.

The committee of the whole proceeded to the consideration of section 17 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

APPROPRIATIONS TO CHARITABLE AND EDUCATIONAL INSTITUTIONS.

1 Section 17. An appropriation for charitable, educational or benevolent pur-
2 poses may be made to a class of corporations, associations or institutions not
3 under the absolute control of the commonwealth, engaged in work or services for
4 the public good, as such classes may be defined by law. Such work or service
5 shall conform to standards of excellence prescribed by law or by an agency
6 created by law.
7 An appropriation to such a class shall be divided among its members in
8 accordance with a plan uniform in its application to them. Such plan shall be
9 prescribed by law or by an agency created by law. No law shall designate such
10 a corporation, association or institution as the beneficiary of an appropriation.
11 Each item containing such an appropriation shall be voted on separately in
12 each house before final action is taken upon the bill of which it is a part and
13 shall be stricken from the bill unless it shall receive the support of two-thirds
14 of the members elected.
15 Corporations, associations and institutions receiving such appropriations shall
16 account therefor to the general assembly or to an agency prescribed by law and
17 shall be subject to inspection by the state government.

NOTE.

Source: Article III, section 17:

"No appropriation shall be made to any charitable or educational institution not under the absolute control of the commonwealth, other than normal schools established by law for the professional training of teachers for the public schools of the state, except by a vote of two-thirds of all the members elected to each house."

Changes in Substance: This is practically a new section.

Upon the question whether private charity should receive state aid at all, the commission is divided, but a majority favor the giving of such aid.

The commission is unanimously of the opinion that if such state aid is to be given, it should be given in accordance with the system set forth in the proposed section. A survey of the commonwealth's charitable institutions and an impartial determination of their actual needs will place the whole matter of charitable appropriations upon a sounder basis than at present.

Under article III, section 15, of the present constitution, charitable appropriations are required to be by separate bills. The commission are unanimously of the opinion that this system is inefficient and therefor undesirable.

The special reference to normal schools in article III, section 17, of the present constitution has been omitted because all normal schools are now under the absolute control of the commonwealth.

Changes in Style: The commission's rules of style have been followed.

Special Note to the commission by the committee on style.

Recommendation for Change in Substance.

Add, after "elected," on line 14: "The votes of each house shall be taken by yeas and nays and the names of the members voting for and on those voting against the item shall be entered on the journal."

On the question,

Will the committee adopt the section as reported?

Mr. McCORMICK. In line two would it be possible to change the word "may" to "shall?" The wording now is "may be made to a class." I just raise that question as to whether it should be compulsory or not.

Mr. PINCHOT. Would not the wording, Mr. McCormick, be better if it were "shall not be made especially to a class?"

Mr. McCORMICK. I propose to vote against this amendment when it finally comes to a vote before the commission, but if they are going to make appropriations to privately owned institutions then they should be made to classes and not to individual institutions. That was my point and I think—

Mr. REED. It seems to me that is the way it reads.

The CHAIRMAN. It is covered further down, "No law shall designate such a corporation, association or institution as the beneficiary of an appropriation."

Mr. SULZBERGER. If you make it "shall" you make it so objectionable that you defeat the amendment.

The CHAIRMAN. The suggested amendment by the committee on style is that the following be added on line fourteen: "The vote of each house shall be taken by yeas and nays and the names of members voting for and on those voting against the item shall be entered on the journal."

On the question,

Will the committee agree to the amendment?

It was agreed to.

On the question,

Will the committee adopt the section as amended?

It was adopted.

ARTICLLE III, SECTION 18.

The committee of the whole proceeded to the consideration of section 18 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

APPROPRIATIONS TO DENOMINATIONAL INSTITUTIONS.

1 Section 18. No appropriations shall be made for charitable, educational or
2 benevolent purposes to any denominational or sectarian institution, corporation
3 or association.

NOTE.

Source: Part of article III, section 18:

"No appropriations. * * * shall be made for charitable, educational or benevolent purposes * * * to any denominational or sectarian institution, corporation or association."

Changes in Substance: None.

Changes in Style: The substance of the clauses in this section in the present constitution which refer to appropriations to persons or communities has been transferred to sections 18-A and 18-B. The provisions in regard to appropriations to denominational and sectarian institutions are taken verbatim from the present constitution.

On the question,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE III, SECTION 18-A.

The committee of the whole proceeded to the consideration of sec- 18-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

CERTAIN APPROPRIATIONS PERMITTED.

1 Section 18-A. Appropriations may be made for the payment of pensions and
2 gratuities for military services; for the payment of pensions for the retirement
3 of classes of officers and employes of the state government and school districts;
4 for the relief of persons or municipalities hereafter injured or damaged by surface
5 subsidence resulting from past or future mining of anthracite coal; and for the
6 payment of the debts of municipalities contracted to enable the commonwealth to
7 repel invasion, suppress domestic insurrection or defend itself in time of war.

NOTE.

Source: Part of article III, section 18:

"No appropriations except for pensions for gratuities for military services shall be made for charitable, educational or benevolent purposes to any person or community * * *"

Changes in Substance: (1) Provision validating payment of pensions for the retirement of officers and employes of the state government and school districts. Article III, section 26-C, clause (n) would prevent an act giving a pension to a designated judge or other officer.

(2) Provision validating appropriations for the relief of persons or municipalities hereafter injured or damaged by the surface subsidence resulting from the past or future mining of anthracite coal.

Clarifying Amendments: This section covers appropriations in the nature of gifts which would otherwise be held unconstitutional because of the provisions in the proposed section 18-B (article III, section 18, of the present constitution, as quoted above).

The provision for military pensions and gratuities is taken from article III, section 18, of the present constitution. The final clause in regard to the debt of municipalities is inserted because of the provisions of article IX, section 9, as proposed (article IX, section 9, of the present constitution). If the state government can assume the debt of a municipality under certain circumstances, it must also be able to appropriate money to pay the debt.

Changes in Style: Article IX, section 9, of the present constitution, provides: "The commonwealth shall not assume the debt or any part thereof, of any city, county, borough or township, unless such debt shall have been contracted to enable the state to repel invasion, suppress domestic insurrection, defend itself in time of war, or to assist the state in the discharge of any portion of its present indebtedness."

The provisions of this section are set forth in article IX, section 9, as proposed. It prevents the assumption of the debt of a city, county, borough or township by the state government, with the exceptions designated. To make the section here proposed complete, the commission have included the exceptions as objects for which appropriations may be made.

The commission's rules of style have been followed in the language of the section.

Special Note to the commission by the committee on style.

The commission will note that we recommend that section 18 be limited to prohibitions on appropriations for charitable, educational or benevolent purposes to any denominational, sectarian institution, corporation or association. As adopted by the commission, section 18 expressly provided that "pensions may be provided for the retirement of judges and of other employes of the commonwealth and its agencies, including the employes of the public schools." We here recommend the use of the words (see lines 2 and 3): "Appropriations may be made for * * * the payment of pensions for the retirement of classes of officers and employes of the state government and school districts," believing that this expresses the intent of the commission. The language adopted by the commission leaves it uncertain whether the commission intended (1) to include employes of municipalities other than school districts;

(2) officers other than judges. It is also uncertain whether a pension to A. B., a judge, would be valid, or whether such pensions could be given only to classes of judges.

Special Note to the commission by the committee on style.

In this section we have gathered all provisions of the constitution, as amended by the commission, permitting gifts which would otherwise be forbidden under section 18-B as herein suggested (article III, section 11, of the present constitution and that part of article III, section 18, of the present constitution which prohibits gifts to any person or community for charitable or educational purposes).

Recommendation of Change in Substance.

Strike out, on lines 4 and 5, the words: "for the relief of persons or municipalities hereafter injured or damaged by surface subsidence resulting from past or future mining of anthracite coal"; insert, "for the relief consequent upon grave public disasters or calamities."

Insert, on line 5, after "coal," "for the payment to funds under public control for the assistance of classes of dependent persons."

If the Commission adopt the recommendations of this committee for the amendment of article IX, section 1, as adopted by the commission, constitutional changes made necessary by the subsidence and the threatened further subsidence resulting from past or future mining of anthracite coal will be completely covered and the provision which we here suggest should be stricken out will become unnecessary.

We suggest the insertion of the words, "for relief consequent upon grave public disasters or calamities" so as to make it possible for the state government to come to the relief of persons or municipalities after such a disaster as the Johnstown flood without violating either the letter or the spirit of the constitution.

The adoption of the amendment inserting the words, "for the payment to funds under public control for the assistance of classes of dependent persons," will remove the doubt otherwise existing as to the constitutionality of such appropriations as those embodied in the widows' pension legislation.

On the question,

Will the committee adopt the section as reported?

Mr. REED. Mr. Chairman: I suppose, sir, you mean what you say there on line five, or lines four and five, "for the relief of persons or municipalities hereafter injured or damaged by surface subsidence," but under section 1 of article IX you have a new paragraph, authorizing the collection of the tax. You do not use the word "hereafter" there. You say "such tax shall be appropriated by law to the relief of persons, partnerships, corporations and municipalities injured or damaged." In one case it is after and in the other it covers all.

Mr. KELLY. I think that inconsistency ought to be corrected, and I would move to strike out the word "hereafter" in line four of section 18-A.

The CHAIRMAN. If the members of the commission will look at the special note to the commission by the committee on style they will find that the committee has made further changes than those suggested by Judge Kelly, and then, with the tax provision further on, your situation would be covered completely.

Mr. KELLY. That is, Mr. Chairman, the thought of the committee is that the words "for the relief consequent upon grave public disasters or calamities" would be comprehensive enough to include the words "the relief of dependent persons from mine-cave subsidence?"

The CHAIRMAN. Our thought was that the whole question of mine-caves would be taken care of under the other section in article IX, which section provides for a special tax and a division of that tax.

Mr. KELLY. I want to say that I can not understand that provision in article IX. I may be a little bit stupid on this, but I want

to get it in my head so I can act intelligently. The thought of the commission was that under the provisions contained in the recommendation under article IX, the words "for the relief of persons, partnerships, corporations and municipaities injured or damaged by surface subsidence resulting from past or future mining of anthracite coal," would not be necessary.

The CHAIRMAN. That is the whole thing. If the wording under article IX is adopted the whole situation will be covered. I might say to Judge Kelly that the recommendation under article IX was the nearest thing that could be agreed upon in our conference in Scranton; that is, that seemed to meet with less opposition than anything else that was suggested.

Mr. SULZBERGER. Is it then proposed to strike it out?

The CHAIRMAN. Yes, sir.

Mr. SULZBERGER. Is it at all clear if the subject would not be put before the supreme court to determine whether the word "hereafter" is implied or not?

The CHAIRMAN. The word "hereafter" would come out.

Mr. SULZBERGER. It would come out, but would not that raise the question whether the word "hereafter" was implied?

The CHAIRMAN. I think it very likely that the supreme court would conclude that the word was implied.

Mr. SULZBERGER. Ought not we try to avoid trouble to the supreme court any more than is necessary by making it so that nobody could raise a question on it?

The CHAIRMAN. Does Judge Kelly insist upon his amendment, or shall we vote upon the amendment of the committee on style, if you are satisfied that the language under article IX takes care of your situation?

Mr. KELLY. Mr. Chairman, under the note "Source: Part of article III, section 18: 'No appropriations, except for pensions or gratuities for military services, shall be made for charitable, educational or benevolent purposes, to any person or community,'" is that out, is that intended to be out of the section? In section 18, which says "No appropriations shall be made for charitable, educational or benevolent purposes to any denominational or sectarian institution, corporation or association," are not the words, "to any person or community" left out? I may not make myself very clear here, but what I am driving at is this, that when the Roney tax bill was called up before the supreme court the suggestion was made that it might be unconstitutional not only on the ground of being an improper classification with reference to coal, but also that it provided for an appropriation to a person or community. Now, if these two words are out, as they seem to be in section 18, then I would say that I agree that the subject would be taken care of under article IX, and then it would not be necessary to insist upon having these words in under this section.

Mr. SULZBERGER. But would it not be necessary, if you take it out of this section, to put it in under article IX, to add the word "hereafter" before "injured or damaged," unless you wanted to include an indefinite number of claims for injuries in the past prior to the adoption of the constitution, which might or might not have the approval of the supreme court?

Mr. KELLY. Yes, I agree with you, Judge Sulzberger. I think that is correct, but I thought we would amend that when we came to article IX. I think you are right about that. I think it ought to be made so that the relief would not be confined to those hereafter injured.

Mr. SULZBERGER. Ought not there be a limitation there?

The CHAIRMAN. I think if you will look at the note under this section you will see the answer to your question as to the use of these words, "person or community."

Mr. KELLY. In other words, the words "for the relief consequent upon grave public disasters or calamities" were thought by the committee on style to be comprehensive enough to include the disasters which might result from the subsidence of the surface.

The CHAIRMAN. No, sir; not in that particular instance that you have suggested just now, unless it was a public disaster. What the committee on style had in mind was that there ought to be constitutional authority for such appropriation, as, for instance, from the state treasury for the relief of the Johnstown people, about which there was grave constitutional question when it was made, and the disaster when the Austin dam broke, and the thought of the committee was that these specific references under article IX to mine-cave situations covered that situation, the mine-cave situation, completely.

Mr. KELLY. I think I ought to apologize to the commission for not having studied this out in advance a little bit more carefully. Of course, what I have in mind is that the provision under article IX, if adopted, shall not be nullified by some defect of omission or commission in some other part of the proposed—

The CHAIRMAN. If you read the notes immediately following the section, it says "except as in this constitution expressly provided" these things shall not be done.

Mr. REED. I think with all deference to the attorney general we have gotten something here that is unconstitutional under the federal constitution. If this section should be allowed to stand and appropriations might be made out of the general fund for people injured by subsidence of surface, and if article IX was amended so that a special tax could be levied on anthracite coal and saying just where that fund is to go, that it is to go into the general fund, then you might get away with it in article IX. As written you provide that a special tax shall be levied on anthracite coal and applied to special purposes. If that is not taking the anthracite coal man's property and applying it to somebody else's benefit, and if that is not a violation of the interstate commerce law, a tax on exports, I do not know where you could get a better case. I think the amendment ought to be separated entirely.

The CHAIRMAN. It will be separated.

Mr. REED. It will not be separated under article IX.

The CHAIRMAN. The anthracite section will not be under the section we are now considering. In order to get the matter before the commission, does Judge Kelly insist upon his amendment to strike out the word "hereafter?"

Mr. KELLY. Mr. Chairman: I think I shall have to insist upon that going to a vote.

Mr. SULZBERGER. The effect of that is to include compensation for injuries in the past; and how long in the past?

The CHAIRMAN. Yes, sir.

Mr. KELLY. Indefinitely.

Mr. SULZBERGER. Indefinitely. I would suppose. Yet the policies of the statute of limitations have been well proved by experience. Suppose a fellow has a claim of fifty years ago.

Mr. KELLY. I would assume that the legislature could under this constitutional provision take care of any thing of that kind. I think it would not be necessary for the constitution to impose a statute of limitations.

The CHAIRMAN. The suggestion of the chair is that further consideration of this question be postponed for the present. I think we can work out a solution of this and solve the difficulties that we have now.

Mr. KELLY. Mr. Chairman: I move that further consideration of this section be postponed for the present.

Mr. McCORMICK. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE III, SECTION 18-B.

The committee of the whole proceeded to the consideration of section 18-B as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

GRATUITIES AND EXTRA COMPENSATION FORBIDDEN.

1 Section 18-B. Except as in this constitution expressly provided, no appro-
2 priation shall be made by the state government for charitable, benevolent or
3 educational purposes to any person or community, and no law shall authorize
4 a gratuity by the state government, give extra compensation after services have
5 been rendered or contract made, or appropriate money to pay a claim against
6 the commonwealth without previous authority of law.

NOTE.

Source: (1) Article III, section 11:

"No bill shall be passed giving any extra compensation to any public officer, servant, employe, agent or contractor, after services shall have been rendered or contract made, nor providing for the payment of any claim against the commonwealth without previous authority of law."

(2) Part of article III, section 18:

"No appropriation, except for pensions or gratuities for military services, shall be made for charitable, educational or benevolent purposes, to any person or community * * *."

Changes in Substance: None.

Clarifying Amendment: The language of article III, section 18, of the present constitution is ambiguous. It is not clear whether it is intended to prevent all gifts to persons or communities or simply to prevent appropriations to persons or communities to be used by them for charitable, educational or benevolent purposes.

The proposed section is drawn so as to cover both of these contingencies.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE III, SECTION 19.

The committee of the whole proceeded to the consideration of section 19 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style, as follows:

Section 19. Appropriations for Support of Widows and Orphans of Soldiers. The general assembly may make appropriations of money to institutions wherein the widows of soldiers are supported or assisted, or the orphans of soldiers are maintained and educated; but such appropriation shall be applied exclusively to the support of such widows and orphans.

NOTE.

Omitted because unnecessary. This class of institutions is covered by article III, section 15, as proposed.

Special Note to the commission by the committee on style.

The commission will note that we have suggested the omission of article III, section 19, of the present constitution because this class of institution is covered by article III, section 15, as proposed.

On the question,

Will the committee adopt the report of the committee on style to omit this section?

It was adopted.

ARTICLE III, SECTION 26.

The committee of the whole proceeded to the consideration of section 26 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

APPROVAL AND VETO BY GOVERNOR.

Section 26. Every order, resolution or vote to which the concurrence of both houses shall be necessary, except on the question of adjournment or of agreement to an amendment to this constitution, shall, if passed by the general assembly, be presented to the governor. If he approves it he shall sign it and it shall then become a law. If he shall not approve it, he shall return it with his objections to the house in which it originated, which house shall enter the objections at large upon its journal. If, after reconsideration, two-thirds of The members elected to that house shall agree to pass the bill, it shall be sent with the governor's objections to the other house and if approved by two-thirds of the members elected to that house, shall become law. The votes of each house shall be taken by yeas and nays and the names of the members voting for and of those voting against the bill shall be entered on the journal.

If a bill shall not be returned by the governor within ten days after it has been presented to him, it shall become law unless the general assembly by its adjournment prevents its return. In case of such adjournment the bill shall become law unless within thirty days after adjournment the governor shall file it with his objections in the office of the secretary of the commonwealth and shall give notice thereof by public proclamation.

NOTE.

Source: (1) Article III, section 26:

"Every order, resolution or vote, to which the concurrence of both houses may be necessary, except on the question of adjournment, shall be presented to the governor, and before it shall take effect be approved by him, or being disapproved, shall be repassed by two-thirds of both houses, according to the rules and limitations prescribed in case of a bill."

(2) Article IV, section 15:

"Every bill which shall have passed both houses shall be presented to the governor; if he approve it he shall sign it, but if he shall not approve it he shall return it with his objections to the house in which it shall have originated, which house shall enter the objections at large upon their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of all the members elected to that house shall agree to pass the bill, it shall be sent with the objections to the other house by which likewise it shall be reconsidered, and if approved by two-thirds of all the members elected to that house it shall be a law; but in such cases the votes of both houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journals of each house, respectively. If any bill shall not be returned by the governor within ten days after it shall have been presented to him, the same shall be a law in like

manner as if he had signed it, unless the general assembly, by their adjournment, prevent its return, in which case it shall be a law, unless he shall file the same, with his objections, in the office of the secretary of the commonwealth, and give notice thereof by public proclamation within thirty days after such adjournment."

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

On the question,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE III, SECTION 26-A.

The committee of the whole proceeded to the consideration of section 26-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

APPROVAL AND VETO OF APPROPRIATION BILLS.

1 Section 26-A. The governor may indicate his approval or disapproval of an
2 appropriation bill by signing or vetoing it as in the case of other bills. If he
3 shall approve one or more items and shall disapprove or desire to reduce one
4 or more other items, he shall return the bill to the house in which it originated
5 setting forth his reasons. The items which he approves shall become law.
6 The items which he disapproves or desires to reduce may be passed over his
7 objections by separate action on each item in the manner prescribed for the
8 passage of bills over his veto. Such items not passed over his objections shall,
9 in accordance with his recommendation, be stricken from the bill or shall become
10 law as reduced by him.

NOTE.

Source: Article IV, section 16:

"The governor shall have power to disapprove of any item or items of any bill making appropriations of money, embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items of appropriations disapproved shall be void, unless repassed according to the rules and limitations prescribed for the passage of other bills over the executive veto."

Changes in Substance: In practice, under the present constitution, the governor pares down various items of appropriation after the adjournment of the general assembly. It will be noted that under section 15 of this article, as proposed, the general assembly can not adjourn for ten days after all appropriation bills have been submitted to the governor. This obliges the governor either to approve or to disapprove all items of such bills before adjournment of the general assembly and in case of his approval of all or part of an item, requires the general assembly, in turn, to reconsider the matter and to decide whether or not to pass the item in spite of the governor's disapproval.

Clarifying Amendment: It is made clear that the governor can cut down a single appropriation; that he can, for example, send back to the general assembly an appropriation bill carrying $100,000 to a class of hospitals with the statement that he approves it in the sum of $60,000. Under the present constitution, the governor's power to do this depends upon an opinion of the supreme court which gives to the word "item" the meaning of "any fraction of a lump sum." (Commonwealth v. Barnett, 199 Pa. 161.)

Changes in Style: The commission's rules of style have been followed.

Special Note to the commission by the committee on style.

For the reasons set forth in the note to this section, your committee have drafted the section in order to make it possible to carry out the action of the commission in requiring all appropriations to be acted on by the governor and, if he disapproves, returned to the general assembly prior to adjournment.

On the question,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE III, SECTION 26-C.

The committee of the whole proceeded to the consideration of section 26-C as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

LOCAL AND SPECIAL LAWS FORBIDDEN.

1 Section 26-C. No local or special law shall be enacted:
2 (a) Regulating the affairs of a municipality;
3 (b) Changing the names of persons or places;
4 (c) For the creation or regulation of highways, ferries or bridges, except
5 bridges across streams which form state boundaries;
6 (d) Regulating cemeteries or public grounds not belonging to the common-
7 wealth;
8 (e) Granting divorce or authorizing the adoption or legitimation of children;
9 (f) Regulating elections other than those relating to constitutional conven-
10 tions, except that laws regulating the registration of electors may be applied
11 to cities of a specified class only;
12 (g) Regulating the organization of a court or the administration of justice;
13 (h) Regulating liens, the collection of debts or the effect of judicial sales of
14 real estate;
15 (i) Regulating schools;
16 (j) Fixing the rate of interest;
17 (k) Regulating the estates of decedents, minors or persons under disability;
18 (l) Regulating labor, trade, mining or manufacturing;
19 (m) Creating corporations, or amending, renewing or extending their charters;
20 (n) Granting a benefit, privilege or power.
21 No local or special law shall be indirectly enacted by the partial repeal of
22 a general law. Laws repealing local or special laws may be enacted.

NOTE.

Source: (1) Article III, section 7:

"The general assembly shall not pass any local or special law:

1. "Authorizing the creation, extension or impairing of liens:
2. "Regulating the affairs of counties, cities, townships, wards, boroughs or school districts:
3. "Changing the names of persons or places:
4. "Changing the venue in civil or criminal cases:
5. "Authorizing the laying out, opening, altering or maintaining roads, highways, streets or alleys:
6. "Relating to ferries or bridges, or incorporating ferry or bridge companies, except for the erection of bridges crossing streams which form boundaries between this and any other state:
7. "Vacating roads, town plots, streets or alleys:
8. "Relating to cemeteries, graveyards, or public grounds not of the state:
9. "Authorizing the adoption or legitimation of children:
10. "Locating or changing county seats, erecting new counties or changing county lines:
11. "Incorporating cities, towns or villages, or changing their charters:
12. "For the opening and conducting of elections, or fixing or changing the place of voting:
13. "Granting divorces:
14. "Erecting new townships or boroughs, changing township lines, borough limits or school districts:
15. "Creating offices, or prescribing the powers and duties of officers in counties, cities, boroughs, townships, election or school districts:
16. "Changing the law of descent or succession:
17. "Regulating the practice or jurisdiction of, or changing the rules of evidence in, any judicial proceeding or injury before courts, aldermen, justices of the peace, sheriffs, commissioners, arbitrators, auditors, masters in chancery or other tribunals, or providing or changing methods for the collection of debts, or the enforcing of judgments, or prescribing the effect of judicial sales of real estate:
18. "Regulating the fees, or extending the powers and duties of aldermen, justices of the peace, magistrates or constables:
19. "Regulating the management of public schools, the building or repairing of school houses, and the raising of money for such purposes:
20. "Fixing the rate of interest:
21. "Affecting the estates of minors or persons under disability, except after due notice to all parties in interest, to be recited in the special enactment:
22. "

23. "Remitting fines, penalties and forfeitures, or refunding moneys legally paid into the treasury:
24. "Exempting property from taxation:
25. "Regulating labor, trade, mining or manufacturing:
26. "Creating corporations, or amending, renewing or extending the charters thereof:
27. "Granting to any corporation, association or individual any special or exclusive privilege or immunity, or to any corporation, association or individual the right to lay down a railroad track:
28. "Nor shall the general assembly indirectly enact such special or local law by the partial repeal of a general law; but laws repealing local or special acts may be passed:
29. "Nor shall any law be passed granting powers or privileges in any case where the granting of such powers and privileges shall have been provided for by general law, nor where the courts have jurisdiction to grant the same or give the relief asked for."

(2) Article VIII, section 7:

"All laws regulating the holding of elections by the citizens or for the registration of electors shall be uniform throughout the state, but laws regulating and requiring the registration of electors may be enacted to apply to cities only, provided that such laws be uniform for cities of the same class."

(3) Part of Article V, section 26:

"All laws relating to courts shall be general and of uniform operation, and the organization, jurisdiction and powers of all courts of the same class or grade, so far as regulated by law, and the force and effect of the process and judgment of such courts, shall be uniform; * * *"

Changes in Substance: (1) In clause (a) "a municipality" has been substituted for "counties, cities, townships, wards, boroughs or school districts." This causes the clause to cover poor districts under the present organization of the state and to cover also any other kind of municipality which may be created in the future.

(2) Clause (i) takes the place of clause 20, omitting the word "public" so that the section will apply also to private schools.

(3) The exception in clause 22 has been omitted.

Clarifying Amendments: (1) In clause (f) the words "other than those relating to constitutional conventions" are inserted so as to forestall any possible objections to such laws which must, almost of necessity, be special.

(2) Clause 16, "changing the law of descent or succession" refers, strictly speaking, only to devolution of property in cases of intestacy. The commission have assumed that it was intended to have a wider application and have therefore used in clause (k) the words "regulating the estates of decedents."

Changes in Style: The section has been very considerably shortened, without omitting any substantive provision. The following analysis will show to which of the new clauses the substances of each of the clauses of the present constitution has been transferred:

1 to (h).

2 to (a). The provisions of clauses 10, 11, 14, 15 and 19 are also included in (a), since the phrase "affairs of a municipality" covers "whatever affects the interest or welfare of the inhabitants." (See opinions of the supreme court in Morrison v. Bachert, 112 Pa. 322; Frose v. Cherry, 122 Pa. 417; Sample v. Pittsburgh, 212 Pa. 533; Montgomery v. Commonwealth, 91 Pa. 125; In re Pottstown Borough, 117 Pa. 538.)

3 to (b).

4 to (g).

5 to (c). The words "laying out, opening, altering or maintaining" are included in the words "creation or regulation." The word "highways" has been used to cover the different kinds of highways named in the present constitution.

6 to (c). The words "relating to" have been included in the words "creation or regulation," which are more accurate. The clause "or incorporating ferry or bridge companies" has been omitted because included in clause (m).

7 to (c). "Vacating" is included in the word "regulation." Specific reference to town plats has been omitted because vacating a town plat must have the effect either of regulating highways or of regulating the affairs of a municipality. In one event the situation is covered by clause (c) and in the other event by clause (a).

8 to (d).

9 to (e).

10 to (a).

11 to (a).

12 to (f). The exception in (f) with respect to registration laws is taken from article VIII, section 7, of the present constitution.

13 to (e).

14 to (a).

15 to (a) except that the reference to election districts is covered by (f).
16 to (k).
17 to (g). It will be noted that in the present clause the grammar is defective although the meaning is fairly clear. There is no such thing as "the practice of any judicial proceeding." The provisions of the first part of article X, section 26, are also included in (g).
18 to (h). "The collection of debts" includes "the enforcing of judgments."
19 to (g).
20 to (i).
21 to (j).
22 to (k).
23 to (n).
24 to (n).
25 to (l).
26 to (m).
27 to (n).
28 to final unlettered paragraph.
29 to section 26-D, of article III.

Special Note to the commission by the committee on style.

The first change of substance explained in the foregoing note may be regarded as a clarifying amendment. The second change is suggested to correct what the committee believe must have been an unintentional omission in the present constitution.

The commission's attention is specially directed to these changes because they may be considered changes of substance and have been so treated in the note.

Recommendation of Change in Substance.

In clause (f) add, after "cities," the words "or boroughs."

There would appear to be no valid reason why the exception should not apply to boroughs as well as to cities.

On the question,

Will the committee adopt the section as reported?

Mr. REED. Mr. Chairman: May I be permitted to ask whether it would be practicable to amend line 21 so as to provide for two classes of interest, one for individuals and one for corporations? I suppose it certainly has come to your knowledge that there has been great difficulty in the last year or two in selling corporation bonds at six per cent. interest, and various devices have been worked out enabling corporations to raise money. Now, under that section I do not suppose it would be constitutional for the legislature to provide that the rate of interest to be paid by corporations shall be six per cent., or might be seven or eight per cent., and the rate for individuals six per cent. It would not be advisable to permit the rate of interest of individuals to be raised, or require it to be raised, at the same time that you raise the interest for corporations; yet today a number of corporations in Pennsylvania are deadlocked because they can not borrow money at six per cent., particularly railroad companies and public utilities. I only raise the question as to whether that can be changed so as to apply to classes. I would like to ask the secretary to think about that and possibly take it up again this afternoon.

Mr. SULZBERGER. Mr. Chairman: I would like Judge Reed to give us his views as to the reason for the distinction between corporations and individuals, because the embarrassment felt by corporations is felt in equal degree by individuals, and a hypercritical person, who will not understand that this was a motion of distinction in favor of individuals, will not hesitate to say that this Commission has been trying to favor corporations to the exclusion of individuals. That is true of all classifications.

Mr. REED. Mr. Chairman: I can understand that, of course, and that is why I suggested that the secretary put his mind on that if the suggestion is worthy of merit at all.

The CHAIRMAN. The suggestion of the chair would be that we proceed to adopt the section so as not to have too many lying over unacted upon, and then such an amendment can be worked out and be offered at a later time.

Mr. REED. Yes, sir.

On the question recurring,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE III, SECTION 26-D.

The committee of the whole proceeded to the consideration of section 26-D as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

CERTAIN LAWS FORBIDDEN.

1 Section 26-D. No law shall grant a benefit, privilege or power which the
2 courts shall have jurisdiction to grant.

NOTE.

Source: Part of the last paragraph of article III, section 7:

"Nor shall any law be passed granting powers or privileges in any case * * * where the courts have jurisdiction to grant the same or give the relief asked for."

Changes in Substance: None.

Changes in Style: The paragraph quoted above from article III, section 7, refers to two subjects: (1) The enactment of a special law to grant powers or privileges provided for by general law; and (2) the enactment of a law to grant powers or privileges where the courts have jurisdiction to grant the same.

The first of these is covered by clause (n) of section 26-C, article III, as proposed. The second, which does not relate to special laws, is included in this proposed section.

Special Note to the commission by the committee on style.

Recommendation of Change in Substance.

Strike out article III, section 26-D.

The language of article III, section 7, from which it is taken, was probably intended to apply only to special benefits, powers and privileges, such, for instance, as the granting of a divorce. If this is the correct interpretation of the present provision, it is superfluous in view of Article III, section 26-C, clause (n), as proposed, which forbids a special law "granting a benefit, privilege or power."

If the language quoted from the present constitution means more than this, the exact meaning is not clear to us. If it is intended to express the idea that a general law can not grant a benefit, privilege or power which the courts are empowered to grant, it simply repeats the principle expressed in article V, section 1, that "the judicial power of the commonwealth is vested" in the courts and can not therefore be exercised by the law-making authority. If it is intended to prevent administrative officers from exercising concurrent jurisdiction with the courts, it can apply only to matters relating to "the conduct of elections" (article V, section 21, as proposed), since all other powers of the courts are necessarily exclusive because either judicial or appointive.

The committee therefore recommend the omission of a provision with such a doubtful and limited operation.

On the question,

Will the committee adopt the recommendation of the committee on style to omit the section?

It was adopted.

ARTICLE III, SECTION 26-E.

The committee of the whole proceeded to the consideration of section 26-E as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

DAMAGES FOR INJURIES.

1 Section 26-E. Laws may be enacted requiring the payment by employers,
2 or by employers and employes jointly, of reasonable compensation for injuries
3 to employes arising in the course of their employment and for occupational
4 diseases of employes, whether or not such injuries or diseases result in death
5 and regardless of fault of employer or employe, fixing the basis of ascertainment
6 of such compensation and its maximum and minimum limits, and providing
7 special or general remedies for the collection thereof. In no other case shall
8 any limit be set by law upon the amount to be recovered for injuries to persons
9 or property. In case of death from injuries, the right of action therefor shall
10 survive and shall be exercised by such persons as shall be designated by law.

NOTE.

Source: Part of article III, section 21:

"The general assembly may enact laws requiring the payment by employers, or employers and employes jointly, of reasonable compensation for injuries to employes arising in the course of their employment, and for occupational diseases of employes, whether or not such injuries or diseases result in death and regardless of fault of employer, or employe, and fixing the basis of ascertainment of such compensation and the maximum and minimum limits thereof, and providing special or general remedies for the collection thereof; but in no other cases shall the general assembly limit the amount to be recovered for injuries resulting in death, or for injuries to persons or property, and in case of death from such injuries, the right of action shall survive, and the general assembly shall prescribe for whose benefit such actions shall be prosecuted. * * *"—(Amendment of November 2, 1915.)

Changes in Substance: None.

Changes in Style: The substance of the last sentence of article III, section 21, is transferred to article XVI, section 7-C, because in the draft here proposed all provisions pertaining exclusively to corporations are placed under article XVI.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE III, SECTION 26-F.

The committee of the whole proceeded to the consideration of section 26-F, as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

REGISTRATION OF LAND TITLES.

1 Section 26-F. Laws may be enacted providing that the state government or
2 the counties may register, transfer, insure or guarantee titles to lands and pro-
3 viding for the determination of interests in such lands and for the creation of
4 indemnity funds. For such purposes new courts may be established and judicial
5 powers may be conferred upon officers of the state government or of the counties
6 subject to the right of appeal by the parties interested to the courts.

NOTE.

Source: Amendment of November 2, 1915, which has no article or section number:

"Laws may be passed providing for a system of registering, transferring, insuring of and guaranteeing land titles by the state, or by the counties thereof, and for settling and determining adverse or other claims to and interest in lands the titles to which are so registered, transferred, insured and guaranteed; and for the creation and collection of indemnity funds;

and for carrying the system and powers hereby provided for into effect by such existing courts as may be designated by the Legislature, and by the establishment of such new courts as may be deemed necessary. In matters arising in and under the operation of such system, judicial powers, with right of appeal may be conferred by the legislature upon county recorders and upon other officers by it designated. Such laws may provide for continuing the registering, transferring, insuring, and guaranteeing such titles after the first or original registration has been perfected by the court, and provision may be made for raising the necessary funds for expenses and salaries of officers, which shall be paid out of the treasury of the several counties."

Changes in Substance: None.

Changes in Style: The section has been considerably shortened by the elimination of unnecessary phrases.

Special Note to the commission by the committee on style.

As previously adopted by the commission, this section was numbered 21-A.

On the question,

Will the committee adopt the section as reported?

Mr. SULZBERGER. Does this mean laws affecting all the lands of all the private persons of the commonwealth?

The CHAIRMAN. This section is the result of the boiling down the amendment to the present constitution—

Mr. SULZBERGER. I know it is.

The CHAIRMAN. Under which, the Torrens system, land titles could be registered.

Mr. SULZBERGER. By the state, under which the state may register, not only register and transfer, but may insure titles?

The CHAIRMAN. Yes sir.

Mr. SULZBERGER. Is that in operation now?

The CHAIRMAN. Yes, nothing has been done under it.

Mr. SULZBERGER. Nothing has been done under it?

The CHAIRMAN. Nothing has been done under it. It was adopted so recently that the commission felt that it was improper to disregard it. I think it was voted on in 1911 by the people—or rather in 1915.

Mr. SULZBERGER. Does it mean that the state shall go into the land title and insurance business?

The CHAIRMAN. The people so voted in 1915.

Mr. SULZBERGER. What do you think of that?

The CHAIRMAN. We had thought of striking it out, but owing to the fact that it was so recently voted upon, we decided to let it remain. The thing that should be done would be to strike it out.

Mr. GORDON. Mr. Chairman: I have no view on the subject immediately before the body, but I came up here today to make a confession of incompetency. I have read this book, and I do not understand it. It seems to me that the committee on style has exceeded its function, its authority, in the most radical and sometimes in the most offensive manner. Nobody can say, taking that book, just exactly what the instrument was which the committee on style has cut up and parceled out, not only changed the language, but changed the substance, sometimes by evasion, but sometimes not, have made an instrument which we ought to take up again as a constitution to be amended. I can see all through this book, so far as I can see anything clearly, that the gentlemen of this committee have imported many of their own ideas into it without, I think, any authority in the resolution appointing them. They have made some independent recommendations which were within their province; some of them, however, are recommendations that we shall take back the decisions that we have made upon matters, which are real motions to recon-

sider, which was not within their province. I read the resolution which appointed them; they were to do as follows: "The second draft incorporating therein such suggestions for the improvement of the language and the arrangement of the sections of the constitution, not affecting the substance of the provisions, which the committee may deem advisable." That was their simple and their clear duty. If there were any blunders in language which we made, they were to correct them, because probably none of us speak with the accuracy we should, or even write, and they were to arrange the sections of the constitution. That is clear. Now, "(b) 'Separately such recommendation for the amendment of and addition to the second draft which the committee itself may deem advisable.'" It seems to me that their duty would have been to submit to us another draft of our second draft of the constitution, indicating wherein they had changed the language, indicating wherein they had changed the arrangement of the sections, and separately suggesting such recommendations as they chose. They have not done that. They have not only rearranged the sections, they have clipped and pruned and put sections together, taken them out of one article and put them in another, taken pieces from one article and put them in another article to make a new section, they have played with the language as purists, almost as dilettanti.

The judicial article is so substantially changed that it is not the article that we adopted in that second draft. Through the whole report I can see the footprints of some gentlemen on that committee who are constitution-makers, and who did not like the instrument as we adopted it, and injected their own ideas into it, so that we will have to take this up again as though it were another constitution which we were to amend and pass upon. Certainly none of us can say what that second draft was from this book. We ought to have that second draft. It ought to have been printed in it. As it is, it is an arduous task to know what we have done. Every one probably is interested in some particular. I was very much interested in a section which was adopted by this commission in my absence. I asked Mr. Pepper, and I spoke to somebody else, and asked if they would not present it, and it announces the fundamental principles of penology, and as I recall it—I do have it here, the draft which this commission acted upon is not before us—it ran something like this, that humanity, sound social economy and justice required that persons deprived of their liberty by the sentence of any court should be given an opportunity for remunerative labor. I do not know that that is the exact language, but that is about it. Now that announces a broad principle of penal administration worthy of going into a constitution. It refers also, I think, to the fact that this was due to the families who depended upon such prisoners. Let me read to you what this committee has reported under section 1-A of article XVIII-E, "Penal and Correctional Institutions. Section 1-A. Laws shall be enacted providing for the maintenance of an efficient system of penal and correctional institutions and agencies. Convicts shall be employed in useful labor and shall receive such treatment and instruction as shall tend to qualify them to become useful citizens. They shall receive reasonable compensation for their labor." This commission adopted a principle which breathes the spirit of humanity and of justice. That change I have read was written by a

hand that had no sympathy with that principle, and which has taken all the spirit out of what this commission adopted. So true is that, that here is a recommendation to the commission, after it has put a number of things together and squeezed out of the article which we have considered all its elementary virtue. This is entirely new matter. "Note: Source: Like the preceding section, it expresses an important principle leaving the details to be prescribed by law." "Recommendation of Change in Substance. Strike out, lines 6 and 7, 'They shall receive reasonable compensation for their labor.'" So after it has defined what this commission adopted, they have made a recommendation that it shall be stricken out altogether. They were not appointed for that purpose. It is really a motion reconsidering what this body did. They were not appointed for that purpose. Any recommendation should be of style, and not change any of the architectonics of this instrument itself. They were but to change the style, but they were not appointed by us to change our opinion, and undo something we had done involving a principle of economic law.

I suggest that simply as an illustration which appeals to me through this book, so far as I can understand it, they have done the same with many, many sections. We can not do our work correctly unless we refer these different sections to the committees again that had them under consideration, and let them pass upon these subjects. The commission as a whole amended it. Moreover, we should have the draft before us which they have thus done violence to, and let us see what they have done.

The CHAIRMAN. The chair was one of the committee on style, and I want to say on behalf of the other members of the committee that the work was done in the best way that they knew how to bring the matters that we conceived we were confronted with under this resolution to the attention of the commission and every one of the changes we have recommended, of course, was to be passed upon by the commission itself, and there was not any thing else other than suggestion in any of these amendments. Now, so far as Judge Gordon's thought as to this particular recommendation, I regret that Mr. Alter is not here. Mr. Alter is a member of the committee on style and the chair is informed that he is very ill and unable to be here. But he is a member of the board of the Western Penitentiary that has charge of the great penitentiary at Bellefonte, which will become the only penitentiary in the state. I do not mean to put upon him the responsibility of this change or mean to imply that it was inserted by him, but certain information which we received led to the thought that if this sentence was in this section, that they were to receive reasonable compensation for their labor, if that was fixed in the constitution, it would or it might totally destroy the discipline of the penitentiary. The convicts of the penitentiary would do nothing unless they were compensated for it, and that was the thought of other members of the committee. It was thought that that particular declaration could be taken care of by legislation or by prison regulations; but if it is the sense of the commission that that language should be restored, it will be restored.

By a system of cross-reference, almost instantly the secretary can read to the commission any section in the precise language that it

was adopted by the commission. We attempted to put that in the book, but it made a book of such magnitude that it was thought that nobody could study it in the time that was left to make the study. I think Judge Gordon will find as he goes along that things will work out in a satisfactory way. If it does not we will have to do something else. We have been trying it up to this time, and we got along very well.

Mr. GORDON. Mr. Chairman: I do not want to obstruct this body in getting on in any way it pleases, but I wanted simply to state my views as a member of this commission and to give an illustration.

What you have said, sir, I think is a demonstration of the accuracy of what I said. The views of some of the keepers of a prison, some jailer, head or subordinate one, if you please, because he may have communicated with this body, this committee on style, that the adoption of this section as it was adopted by this commission might interfere with the discipline of the prison, was sufficient to have our work impaired in the manner in which I have illustrated. Now, that jailer should have appeared before some body here and argued against that provision, if he wanted to. Of course, jailers are against the provision this commission adopted. Any man who has the custody of the bodies of other men in a prison or elsewhere is never a humanitarian. That has been my experience as a practicing lawyer and as a judge, and a wide experience it was, for I have my colleague in front of me to vouch for the fact that when I was judge I gave very much consideration to matter of penal institutions and the treatment of prisoners there; but this report that this committee has sent out does not retain the redeeming clause, and it should be somewhere noted for this commission to see when it comes to pass upon the section to which I am referring. So throughout this instrument, that which they have mutilated does not appear in its primary form. It is simply stated that this is from two or more sources, sometimes the source is given in extenso, and sometimes only in part. I would be groping in the dark on the greater part of this report now—

The CHAIRMAN. If we run up against situations that can not be taken care of in this report, of course, we will have to arrange to take care of them some other way. When we do reach that point, I am willing to entertain any suggestions from any member of the commission.

Mr. FOX. Mr. Chairman: Would it not be possible for us to obviate the difficulty which Judge Gordon has suggested to a certain degree by furnishing us with copies of the final draft that was adopted by the commission?

Mr. GORDON. That would be very helpful.

Mr. FOX. I have one at home, but I have none here.

The CHAIRMAN. I think that can be very readily done. We will endeavor to do it at once. I do not know just how many of those reports we have. They have been very widely distributed, but I think we have sufficient copies to do that.

On the question recurring,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE III, SECTION 26-G.

The committee of the whole proceeded to the consideration of section 26-G as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

REGULATION OF ADVERTISING.

1 Section 26-G. Laws may be enacted regulating advertising on public ways,
2 in public places, and on private property in public view.

NOTE.

Source: This is entirely new matter.

Special Note to the commission by the committee on style.

As adopted by the Commission this section was numbered Article XVIII-A, section 19-B.

Recommendation of Change in Substance.

Strike out article III, section 26-G.

The validity of the legislation covered by this section will ultimately be passed upon by the supreme court of the United States if disputed. The objection urged against it will be that it deprives persons of property without due process of law, contrary to the provisions of the fourteenth amendment to the federal constitution. In interpreting the federal constitution, the supreme court of the United States cannot give weight to such a declaration as is proposed because to do so would be to allow the state to decide for itself whether it was disregarding the prohibition of the fourteenth amendment.

On the question,

Will the committee adopt the report of the committee on style to omit this section?

It was adopted.

ARTICLE III, SECTION 26-H.

The committee of the whole proceeded to the consideration of section 26-H as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

MILITIA.

1 Section 26-H. Laws shall be enacted to provide for the arming, organization
2 and discipline of the freeman of the commonwealth for its defense. Persons
3 having conscientious scruples against bearing arms may be exempted by law from
4 military service.

Source: Article XI, section 1.

"The freemen of this commonwealth shall be armed, organized and disciplined for its defense when and in such manner as may be directed by law. The general assembly shall provide for maintaining the militia by appropriations from the treasury of the commonwealth, and may exempt from military service persons having conscientious scruples against bearing arms."

Changes in Substance: None.

Changes in Style: In the constitution of 1874 this section for the first time appeared as a separate article, with one section. The Commission regard it as unnecessary to treat this subject in a separate article because it can be completely dealt with in one section and because, in its general nature, it is like other provisions in article III.

The language has been changed in accordance with the Commission's rules of style.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE III, SECTION 26-I.

The committee of the whole proceeded to the consideration of section 26-I as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

STREAMS.

1 Section 26-I. Laws shall be enacted to provide for maintaining the purity
2 of streams.

NOTE.

Source: This is entirely new matter, inserted so as to impose upon the law-making power a constitutional mandate to perform what the Commission consider a very important duty.

Special Note to the commission by the committee on style.

As previously adopted by the Commission this section was numbered article III, section 22-B.

On the question.

Will the committee adopt the section as reported?

Mr. REED. Mr. Chairman: This is entirely new matter, and I think it ought to be considered for at least five minutes. It involves the question of coal mines and water from mines all over the state of Pennsylvania. We discussed that last spring, I do not remember what we did with it.

The CHAIRMAN. A declaration of that kind was adopted by the commission and the secretary will read it.

Mr. REED. Why do you say it is entirely new matter?

The CHAIRMAN. By new matter we mean that it is new matter to the constitution as it is now it is not in the constitution of 1874.

Mr. REED. Then it was new matter by the committee?

The CHAIRMAN. No, sir.

Mr. REED. Has it been changed at all, sir?

The CHAIRMAN. The secretary will read the section as adopted by the commission.

The secretary read the section as follows:

The general assembly shall by general laws provide for maintaining the purity of streams in this commonwealth.

Mr. REED. Then it has been left as it is now. Laws shall be enacted to provide for maintaining the purity of streams. I thought we had pretty carefully considered that at that time in order to protect the interests all over the state. I know there was some discussion about it, I do not know but this matter may be the same language.

On the question recurring,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE III, SECTION 26-J.

The committee of the whole proceeded to the consideration of section 26-J as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

BILLS IN SPECIAL SESSIONS.

1 Section 26-J. At a special session, there shall be no legislation upon subjects
2 other than those designated in the proclamation of the governor calling such
3 session.

NOTE.

Source: Article III, section 25:

"When the general assembly shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the governor calling such session."

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE III, SECTION 27.

The committee of the whole proceeded to the consideration of section 27 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

SECTION 27. STATE INSPECTION OF MERCHANDISE PROHIBITED.

NOTE.

In the present constitution this section reads:

"No state office shall be continued or created for the inspection or measuring of any merchandise, manufacture or commodity, but any county or municipality may appoint such officers when authorized by law."

Omitted.

The provisions of this section have become obsolete.

On the question,

Will the committee adopt the recommendation of the committee on style to omit this section?

It was adopted.

ARTICLE III, SECTION 28.

The committee of the whole proceeded to the consideration of section 28 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

CHANGE OF CAPITAL.

1 Section 28. No law changing the location of the capital shall be valid unless
2 ratified by a majority of the electors of the commonwealth voting on the ques-
3 tion.

NOTE.

Source: Article III, section 28:

"No law changing the location of the capital of the state shall be valid until the same shall have been submitted to the qualified electors of the commonwealth at a general election and ratified and approved by them."

Changes in Substance: None.

Clarifying Amendment: It has been made clear that only a majority of the electors voting on the question, not a majority of all the electors who vote, must ratify the proposed law.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE III, SECTION 31.

The committee of the whole proceeded to the consideration of section 31 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

SECTION 31. CORRUPT SOLICITATION.

In the present constitution this section reads:

"The offence of corrupt solicitation of members of the general assembly or of public officers of the state or of any municipal division thereof, and any occupation or practice of solicitation of such members or officers to influence their official action, shall be defined by law and shall be punished by fine and imprisonment."

Omitted. "Corrupt solicitation" is another name for attempted bribery. "Any occupation or practice of solicitation" is a repetition of the same idea. The offense of attempting to bribe a public servant (taken from article III, sections 29 and 30, of the present constitution) is defined in article XII, section 3-I, as proposed, and is there designated as "bribery." It is unnecessary to require the enactment of a law to define what the constitution itself denies.

Special Note to the commission by the committee on style.

The commission will note that we have omitted this section because the subject-matter is completely covered by article XII, section 3-I.

On the question,

Will the committee adopt the recommendation of the committee on style to omit this section?

It was adopted.

ARTICLE IV, SECTION 1.

The committee of the whole proceeded to the consideration of section 1, as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

EXECUTIVE POWER.

1 Section 1. The executive power of the commonwealth shall be vested in a
2 governor, a lieutenant governor, a secretary of the commonwealth, an attorney
3 general, an auditor general, a state treasurer, a secretary of internal affairs, a
4 commissioner of education, a state council of education, and in other executive
5 officers as prescribed by law.

NOTE.

Source: Article IV, section 1, which reads:

"The executive department of this commonwealth shall consist of a governor, lieutenant governor, secretary of the commonwealth, attorney general, auditor general state treasurer, secretary of internal affairs and a superintendent of public instruction."

Changes in Substance: (1) The superintendent of public instruction is omitted from the list of executive officers because a state council of education with a state commissioner of education as its chief executive officer is provided for in article X, section 3-A.

(2) The clause "other executive officers as prescribed by law" is new. It permits the creation of new executive departments co-ordinate with those specially mentioned. The experience of the federal government shows that it is wise to allow for this kind of growth.

Changes in Style: The section is made to conform to the first sections of the legislative and judicial articles by vesting the executive power of the commonwealth in certain officers, being all the executive officers named in the constitution, and in "other executive officers as prescribed by law." The present constitution states that the executive department consists of certain officers. This is inaccurate, because the executive department or branch of the state government consists of all of its officers.

Special Note to the commission by the committee on style.

Your committee has added "a commissioner of education" and "a state council of education" to the list of executive officers set forth in this section, in order that the section should contain all executive officers provided for in the constitution as proposed.

On the question,

Will the Committee adopt the section as reported?

Mr. REED. Mr. Chairman: Ought not the commissioner of banking be a member of that executive department?

The CHAIRMAN. I may say in answer to that, Judge Reed, that some consideration was given to that question, and it was decided that it might not be the wise thing to do, that there might be a general department created after while that would take in a great many activities. The reason that the commissioner of education was kept in was because the superintendent of public instruction is in the present constitution. I only say this for myself, that it would be more harmonious if we struck out the words "state council of education," because there are a number of state councils that are not enumerated in the constitution.

Mr. REED. Mr. Chairman: It seems to me that he ought to be a member of the executive department.

The CHAIRMAN. That is what I think.

Mr. REED. Mr. Chairman: I would move to amend that section by striking out the words, "state council of education."

Mr. McCORMICK. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the committee adopt the section as amended?

It was adopted.

Mr. THORPE. Mr. Chairman: May I call your attention to a matter that you possibly have overlooked? In this report of the committee on style, under the section "Executive Power," there is a provision for the commissioner of education to be appointed by the governor, but there seems to be no reference in the article on education about the superintendent of education so far as I can discover. May I ask for information on that point from the secretary?

The CHAIRMAN. In the section on executive power that we adopted, we struck out the words "state council of education."

Mr. THORPE. Yes, but you are speaking now of the commissioner of education in this section on executive power, and now where is there any other reference to the commissioner of education?

Mrs. MILLER. In article X, section 3-A.

Mr. THORPE. Yes, that is true, but you say you strike it out and leave it to the governor. May I ask are you going to prescribe any duties for the commissioner of education?

The CHAIRMAN. I think they ought to be prescribed.

Mr. THORPE. Where is it?

Mr. PINCHOT. Under article X, section 3-A, there is recommendation by the committee on style.

Mr. THORPE. It does not say he shall do it.

The CHAIRMAN. Sir?

Mr. THORPE. It does not say he shall do it, it does not prescribe any duties.

The CHAIRMAN. My own thought is that when we come to that we will have to redraft it, because by this morning's action striking out the council of education as one of the executive agencies of the state, we will have to confer power on the commissioner of education, when we come to that.

Mr. FOX. Mr. Chairman: Ought it not be inserted here as an amendment to section 1, providing for the other executive officers, to make it plain? It seems to me it ought to go in there.

The CHAIRMAN. I think so. The secretary will draft a section for further consideration during our adjournment to take care of that.

Mr. TYSON. Now that we are back to that point with the executive power it is not clear to me at all why the commissioner of education has been returned to the executive. As I remember, when the matter was under consideration before and when that article was adopted the commissioner of education was left out purposely, as he was more in line with the head of a department rather than part of the executive. It is not clear to me why he was returned.

The CHAIRMAN. He was not left out as we adopted it. His title was changed, as it was in the constitution of 1874, to superintendent of public instruction, but the title of commissioner of education was the change that was made by the committee. Now, Doctor Thorpe's suggestion is an entirely valid one, and we will have to provide what his duties are, as we struck out the council of education as one of the executive agencies of the state, because that would leave the commissioner of education in the air.

Mr. McCORMICK. Does not Mr. Tyson mean that this superintendent or commissioner of education shall be elected by the council of education, rather than be an appointive officer by the governor? Is not that the point you make, Mr. Tyson?

Mr. TYSON. No, my point is that he should not be included in the list of executives but that he should rather be considered as the head of the department, as the highway commissioner or the commissioner of agriculture and other heads.

Mr. GORDON. I do not think we can leave it as it is; we should amend it so as to show what he is to do.

ARTICLE IV, SECTION 5.

The committee of the whole proceeded to the consideration of section 5 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

QUALIFICATIONS OF GOVERNOR.

1 Section 5. The governor shall be a citizen of the United States at least
2 thirty years of age. He shall have been a resident of the state for seven years
3 next preceding his election unless absent on the public business of the United
4 States, of the state government or of a municipality of the commonwealth.

NOTE.

Source: Article IV, section 5, which reads:

> No person shall be eligible to the office of governor or lieutenant governor except a citizen of the United States, who shall have attained the age of

thirty years, and have been seven years next preceding his election an inhabitant of the state, unless he shall have been absent on the public business of the United States or of this state.

Changes in Substance: None.

Clarifying Amendment: Under the present constitution it is not clear whether the absence on public business referred to in section 5 includes not only public business of the state government, but also public business of a municipality. For instance, if a man had been for some years in Europe investigating highway conditions for the city of Pittsburgh, would he be eligible to the governorship? The proposed form answers this question in the affirmative.

Changes in Style: (1) The lieutenant governor is not mentioned because his qualifications are covered by section 12-A.

(2) "Inhabitant" is changed to the more common word "resident." The fourteenth amendment to the constitution of the United States makes all persons born or naturalized in the United States and subject to the jurisdiction thereof "citizens of the United States and of the state wherein they reside." Since it is intended that the governor should not only be a citizen of the United States but also a citizen of the commonwealth, he should be required to reside in the state, so as to conform to the language of the federal constitution.

On the question,

Will the committee adopt the section as reported?

Mr. FOX. Mr. Chairman: The clause added, "or of a municipality of the commonwealth," as the reason assigned, does not seem to me to be of sufficient force to justify our inserting that. The city of Pittsburgh would not likely send a man abroad for four or five years. I move that we strike that out.

The CHAIRMAN. What words do you move to strike out?

Mr. FOX. The words "or a municipality of the commonwealth."

The CHAIRMAN. Then it would require the inserting of the word "or" before the words "of the state government."

Mr. SULZBERGER. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the committee adopt the section as amended?

It was adopted.

ARTICLE IV, SECTION 5-A.

The committee of the whole proceeded to the consideration of section 5-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

ELECTION OF GOVERNOR.

Section 5-A. The governor shall be chosen by the electors of the commonwealth at the places where they shall vote for representatives. The returns of the election shall be sealed up and transmitted to the seat of government, directed to the president of the senate, who shall open and publish them in the presence of the members of both houses of the general assembly. The person having the highest number of votes shall be governor. If two or more shall have the same and the highest number of votes, one of them shall be chosen governor by the joint vote of the members of both houses.

NOTE.

Source: Part of article IV, section 2, which reads:

"* * * *; he shall be chosen on the day of the general election, by the qualified electors of the commonwealth, at the places where they shall vote for representatives. The returns of every election for governor shall be sealed up and transmitted to the seat of government, directed to the president of the senate, who shall open and publish them in the presence of the members of both houses of the general assembly. The person having the highest number of votes shall be governor, but if two or more be equal and highest in votes, one of them shall be chosen governor by the joint vote of the members of both houses. * * *"

Changes in Substance: None.

Changes in Style: (1) The reference to the general elections is omitted because covered by article XII, section 3-A.

(2) The words "if two or more shall have the same and the highest number of votes" are substituted for the words "if two or more be equal and highest in votes," for the sake of more accurate English.

Special Note to the commission by the committee on style.

Recommendation of Change in Substance.

Strike out line 2: "at the place where they shall vote for representatives." The committee regard this provision as unnecessary.

On the question,

Will the committee adopt the section as reported?

The CHAIRMAN. The recommendation of the committee on style is to strike out, line two, "at the places where they shall vote for representatives."

On the question,

Will the committee agree to the amendment?

Mr. REED. Mr. Chairman: What is the objection to leaving that in?

The CHAIRMAN. As Judge Reed intimates, there is no objection to leaving that in.

Mr. REED. Mr. Chairman: Every time you make a change in the constitution without any good reason, you set up something for some court to have to decide.

Mr. GORDON. That is only too true.

Mr. REED. I do not see any reason for making any amendment. I tried to say that under the Bill of Rights. To make changes just for the sake of making them, will only encourage litigation.

On the question recurring,

Will the committee agree to the amendment?

It was agreed to.

On the question recurring,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE IV, SECTION 5-B.

The committee of the whole proceeded to the consideration of section 5-B as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

CONTESTED ELECTION OF GOVERNOR.

1 Section 5-B. A contested election of a governor shall be determined by a
2 committee selected from both houses of the general assembly and formed and regu-
3 lated as prescribed by law.
4 The chief justice of the supreme court shall preside at the trial of such a con-
5 tested election. He shall determine questions regarding the admissability of evi-
6 dence and shall, upon request of the committee, pronounce his opinion upon other
7 questions of law.

NOTE.

Source: (1) Part of article IV, section 2, as follows:

"* * * Contested elections (governor and lieutenant governor) shall be determined by a committee, to be selected from both houses of the general assembly, and formed an regulated in such manner as shall be directed by law."

(2) Part of article IV, section 17, which reads:

"The chief justice of the supreme court shall preside upon the trial of any contested election of governor or lieutenant governor, and shall decide questions regarding the admissibility of evidence, and shall, upon request of the committee, pronounce his opinion upon other questions of law involved in the trial. The governors and lieutenant governor shall exercise the duties of their respective offices until their successors shall be duly qualified."

Changes in Substance: None.

Changes in Style: (1) The reference to the lieutenant governor is omitted because covered by section 12-A.

(2) The last sentence of article IV, section 17, of the present constitution is transferred to section 5-C, thus leaving section 5-B to deal only with contested elections.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE IV, SECTION 5-C.

The committee of the whole proceeded to the consideration of section 5-C as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows.

TERM OF GOVERNOR.

1 Section 5-C. The governor shall hold office for four years from the third Tues-
2 day of January succeeding his election or until his duties shall devolve by law
3 on another. A person elected governor shall not be eligible for the succeeding
4 term.

NOTE.

Source: (1) Article IV, section 3, which reads:

"The governor shall hold his office during four years from the third Tuesday of January next ensuing his election, and shall not be eligible to the office for the next succeeding term."

(2) Part of article IV, section 17, as follows:

"* * * The governor and lieutenant governor shall exercise the duties of their respective offices until their successors shall be duly qualified."

Changes in Substance: None.

Clarifying Amendments: (1) The words "until his duties shall devolve on another" are used instead of "until his successor shall qualify," to avoid any doubt as to the meaning of the word "successor."

(2) In the second sentence the words "A person elected governor" are used so as to make it clear that a lieutenant governor who has discharged the duties of governor because of the governor's death or disability may nevertheless be elected governor at the next gubernatorial election.

Changes in Style: The sentence from section 17 is abbreviated and reference to the lieutenant governor is omitted because covered by section 12-A.

On the question,

Will the committee adopt the section as reported?

The CHAIRMAN. There is no change in substance.

Mr. GORDON. Mr. Chairman: I want to say a word following what Judge Reed said. I think the language of present constitutions ought to be prserved unless there is a good reason, a complete reason, for making the change. These previous constitutions have been passed upon, their language has become a fixture in the law. That language has been interpreted, and has a definite legal meaning, and then it has the legal value of tradition behind it, which counts for much in the law as it does in other matters. It is always an error in the fundamental law to make a change in long-continued language which has public sentiment, judicial recognition

and historicity behind it. If there is a reason for the change, a substantial reason, make it; but if not, it is wrong to make the change. I simply want to give my reason for what Judge Reed has said.

The CHAIRMAN. It seems to me that the question under consideration is section 5-C, term of governor.

Mr. GORDON. Mr. Chairman: One can not tell from reading that whether the language has been altered. The report says no change in substance; but one can not tell whether there is a change in style, and style as been a very expensive term with that committee, sir, and has resulted in making changes of language in the old instrument. I simply say I do not know—

The CHAIRMAN. The changes in style all follow the rules of style that were adopted in order to make for uniformity. They all follow the general rule.

Mr. REED. Mr. Chairman: Will, the point I tried to make when we had up the Bill of Rights, Judge Gordon was not here at that time, is that we are going to report to the legislature a document in which on page after page we will have changes in language, some of which has been with us, like the language of the Bible, so long that it has become a common expression, and we know exactly what it means, and your committee has changed "the" to "a" and "a" to "the" and twisted sentences around. What would a legislature do with it when they get it? They will say, "What was the sense of changing this provision and that provision and putting it up as a solemn amendment, when the only effect is one or two words?" Can not we let well enough alone in a good many cases?

Now, you take that Declaration of Rights, and with the exception of the provision as to the right to vote or hold office which the commission adopted, which could have been put in the article on elections, the changes made there are simply transmissions, as I remember, of words from one section to another. It seems to me the declaration is considered a very solemn part of that, sacred part of that instrument. It was not to be amended unless for substantial reasons. I am only thinking of the reception we will get from a body that will be very hostile to our work anyhow.

The CHAIRMAN. I think possibly that many of the difficulties that are in the minds of Judge Gordon and of Judge Reed can be cleared up. The commission will have to hold another meeting, and by printing, as we can have printed, the constitution in parallel columns, it can be seen at a glance what the changes are. I might say there was a great deal of work connected with the preparation of this report, and the mere matter of getting it printed, or getting anything printed, to get before the commission was a task itself. What we do today will not be the final act of the commission. The commission will have to meet again in order to make up a final report, that is sure.

Mr. GORDON. Mr. Chairman: There is a change in that section in the language that it seems to me is a mere piece of refinement. The constitution stated the governor shall hold his office during four years from the third Tuesday of January next ensuing his election, and shall not be eligible to the office for the next succeeding term. Now, it seems to me that it is a very clear constitutional provision. It is changed thus, "The governor shall hold office for four years

from the third Tuesday of January next succeeding his election or until his duties shall devolve by law on another." I see no reason for that change. I do not know why the language is inserted.

The CHAIRMAN. Does the gentlemen move to substitute the provision of the present constitution?

Mr. GORDON. Oh, no, I do not. It is not material at all. This phase runs all through it. I want to point out that there is the insertion of additional language in that clause that seems to me to be without purpose except to make an innovation.

The CHAIRMAN. One of the thoughts that occurred to the committee in connection with this was, if, for instance, the governor should become insane, whether the present constitution covered that contingency.

Mr. GORDON. I doubt whether that Doubting Thomas will ever have his doubts removed.

On the question recurring,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE IV, SECTION 5-D.

The committee of the whole proceeded to the consideration of section 5-D as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

SUPREME EXECUTIVE POWER.

1 Section 5-D. The supreme executive power shall be vested in the governor,
2 who shall take care that the laws be faithfully executed.

NOTE.

Source: The first clause of article IV, section 2:

"The supreme executive power shall be vested in the governor, who shall take care that the laws be faithfully executed."

Changes in Substance: None.

Changes in Style: The present form is copied verbatim.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE IV, SECTION 7.

The committee of the whole proceeded to the consideration of section 7 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

MILITARY POWER.

1 Section 7. The governor shall be the commander-in-chief of the army and
2 navy of the commonwealth, and of the militia, except when they shall be called
3 into the service of the United States.

NOTE.

Source: Article IV, section 7, which reads:

"The governor shall be commander-in-chief of the army and navy of the commonwealth, and of the militia, except when they shall be called into the actual service of the United States."

Changes in Substance: None.
Changes in Style: The word "actual" is omitted because it adds nothing to the meaning.

On the question,

Will the committee adopt the section as reported?

Mr. GORDON. Mr. Chairman: May I call the commission's attention to a clause in this section because the change is said not to be of substance. The constitution read, "Section 7. The governor shall be the commander-in-chief of the army and navy of the commonwealth, and of the militia, except when they shall be called into the actual service of the United States." The committee struck out the word "actual." They say, "The word 'actual' is omitted because it adds nothing to the meaning." The body which adopted that word "actual", which is stricken out by some irreverent hand, had for its chairman William M. Meredith, who was attorney general of the United States; Theodore Cuyler, George W. Biddle, Wayne MacVeagh, Louis Q. Cassidy, James Boyd, William H. Armstrong—I am quite sure that I could name fifty scholars, orators, authors and statesmen in that body—and the word "actual" has a meaning, a meaning which is helpful in that clause. Why should that word "actual" be stricken out? Because they think that it has no meaning today, is it a detriment there? Do they do it upon the fact of the ponderability of the word adding unnecessary weight to the constitution. I want to call your attention to the question of the action of this committee in striking right and left at the litany of the constitution because they do not like it.

The CHAIRMAN. Our thought was that some of those words stress the meaning but did not add anything to the real meaning, and that this was one of them.

Mr. GORDON. May I ask then if you thought that why did you strike it out?

The CHAIRMAN. We thought that was the order of the commission in the resolution. If we were mistaken in that it was a mistake in entire good faith. That was our judgment of the meaning of the resolution as it was passed, that we were to incorporate such changes as would be for the improvement of the language.

Mr. GORDON. It has become almost proverbial in connection with economic reform that to innovate is not to reform. This committee ought to have had that principle before it, that merely to make an innovaion is not to reform. That is all they did in striking out the word "actual." They merely innovated. They merely struck it out with the thought probably that it did no good in there.

The CHAIRMAN. Does the commission desire to change this section and insert the word "actual?"

Mr. GORDON. I have no fondness for the word. It has got a good many vowe's in it, it is mellifluous.

On the question recurring,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE IV, SECTION 8.

The committee of the whole proceeded to the consideration of section 8 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

APPOINTING POWER.

Section 8. The governor shall appoint a secretary of the commonwealth, an attorney general and a secretary of internal affairs to serve during his pleasure, and other officers as prescribed by law.

When the senate is in regular session, except within ten days before final adjournment, the governor shall exercise the power to appoint an officer only after nomination to the senate and by and with the advice and consent of a majority of its members.

The governor may fill by appointment a vacancy in an office to which he may appoint. If he shall appoint to an appointive office during a recess of the senate or within ten days before final adjournment of a regular session thereof, such appointment shall be valid until the end of the next regular session of the senate, and the person so appointed shall be deemed to have been rejected by the senate at such session unless nominated by the governor and confirmed by the senate.

The governor may fill by appointment a vacancy in the office of auditor general, state treasurer and in any other elective office which he may be authorized to fill. Such vacancy shall be filled by election on the next election day appropriate to the office which shall fall not less than sixty days after the occurrence of the vacancy. An appointee to fill a judicial vacancy shall serve until the first Monday of January after such election. Any other appointee shall serve until the person so elected shall take office as prescribed by law.

If a power of appointment to an appointive or elective office shall arise during a session of the senate and not within ten days before final adjournment, the governor shall, at such session, nominate a proper person for the office. If a power of appointment to an appointive office shall arise within ten days before final adjournment of a session of the senate or during a recess of the senate, he shall, at the next session of the senate nominate a proper person for the office. In either case, if the senate shall reject a nomination and shall notify the governor that it will not adjourn within ten days, he shall nominate another person for the office. If he shall fail to nominate as herein required, he shall not appoint to the office except after nomination to the senate and by and with the advice and consent of a majority of its members.

If the nomination of a person to an office shall be rejected by the senate he shall not be appointed to such office before the next session of the senate.

In acting on executive nominations, the senate shall sit with open doors. The vote shall be taken by yeas and nays and shall be entered on the journal.

NOTE.

Source: (1) Article IV, section 8, which reads:

"He shall nominate and, by and with the advice and consent of two-thirds of all the members of the senate, appoint a secretary of the commonwealth and an attorney general during pleasure, a superintendent of public instruction for four years, and such other officers of the commonwealth as he is or may be authorized by the constitution or by law to appoint; he shall have power to fill all vacancies that may happen, in offices to which he may appoint, during the recess of the senate, by granting commissions which shall expire at the end of their next session; he shall have power to fill any vacancy that may happen, during the recess of the senate, in the office of auditor general, state treasurer, secretary of internal affairs or superintendent of public instruction, in a judicial office, or in any other elective office which he is or may be authorized to fill; if the vacancy shall happen during the session of the senate, the governor shall nominate to the senate, before their final adjournment, a proper person to fill said vacancy; but in any such case of vacancy, in an elective office, a person shall be chosen to said office on the next election day appropriate to such office according to the provisions of this constitution, unless the vacancy shall happen within two calendar months immediately preceding such election day, in which case the election for said office shall be held on the second succeeding election day appropriate to such office. In acting on executive nominations the senate shall sit with open doors, and in confirming or rejecting the nominations of the governor, the vote shall be taken by yeas and nays and shall be entered on the journal." (Amendment of November 2, 1909.)

(2) Article V, section 25, which reads:

"Any vacancy happening by death, resignation or otherwise, in any court of record, shall be filled by appointment by the governor, to continue till the first Monday of January next succeeding the first general election, which shall occur three or more months after the happening of such vacancy."

Changes in Substance: (1) The secretary of internal affairs is to be appointed by the governor, and not elected as at present. His election is by inference a constitutional mandate, since in Article IV, section 8, of the present con-

stitution, above quoted, he is placed in a list ending with the words "or in any other elective office." The commission believe that he should be appointed because he is simply a subordinate executive officer having the same relation to the governor as the attorney general or the secretary of the commonwealth. The state treasurer and auditor general are in a very different position because of their financial responsibilities.

(2) A majority of the members of the senate is required to consent to appointments, instead of two-thirds, as heretofore. The commission believe that to require consent of two-thirds is to increase the probability of deadlocks, and that the majority rule, as established by article II, section 2, of the constitution of the United States, is better.

(3) New provisions have been introduced so as to carry into effect the principle that the governor should, so far as possible, obtain the consent of the senate to all appointments. The operation of these provisions can best be explained by the following illustrations:

(a) The secretary of the commonwealth dies while the senate is in recess. The governor immediately appoints A to fill the vacancy. During its next session the senate refuses to consent to the appointment of A.

Under the present constitution the governor can wait until the end of the session and then reappoint A for two more years. Under the proposed new section (lines 32 to 34) the governor could not appoint a person who had been so rejected.

(b) A vacancy is filled as in (a). During the next session of the senate, the governor fails to send in any nomination for the office.

Under the present constitution he can wait until the end of the session and can then re-appoint A or appoint B. Under the proposed new section he would lose his power of appointment by the provisions of lines 29 to 33.

(c) A vacancy is filled as in (a). During the next session of the senate the governor sends several nominations to the senate, but does not nominate A. All the nominations are rejected.

Under the present construction, the governor can wait until the end of the session and can then re-appoint A. Under the proposed new section he could not do this because, by lines 32 to 34, A would be in the position of a rejected nominee.

(d) Under the present constitution, if the secretary of the commonwealth dies just before the senate convenes, it is doubtful whether the governor can wait until after the senate convenes and then appoint a successor without the senate's consent. Probably he can not.

In the proposed section it is made clear that the governor must try to obtain the consent of the senate if the appointment is made or the vacancy occurs during a session of the senate and that in either case he can not after adjournment appoint a person rejected by the senate.

(4) In paragraph four, line 18, two calendar months has been changed to "sixty days."

(5) It is provided (lines 16 to 18) that judicial vacancies shall be filled by election on the next appropriate election day falling not less than sixty days after the occurrence of the vacancy. The time limit set by the present constitution (article IX, section 25) is three months. The change is in the interest of uniformity and to avoid the conflict now existing between article IV, section 8, and article V, section 25, of the present constitution.

(6) In the present constitution there is no express statement as to the duration of an appointment to an elective office. In the proposed new section it is provided (lines 18 to 20) that such an appointment shall be valid until the person elected to fill the vacancy shall take office.

Changes in Style: The provisions of the section have been arranged as follows:

(a) Duty to appoint constitutional officers.
(b) Duty to obtain consent of senate if in session.
(c) Vacancies in appointive offices.
(d) Vacancies in elective offices.
(e) Duty to obtain consent of senate in all cases so far as possible.
(f) Disqualification of a rejected nominee.
(g) Procedure of senate.

Special Note to the commission by the committee on style.

We have added, in paragraph 5, the sentence: "In either case, if the senate shall reject a nomination and shall notify the governor that it will not adjourn within ten days, he shall nominate another person for the office." (Lines 26 to 29.)

This is to carry out the commission's intention to compel the governor, so far as possible, to obtain the senate's consent to appointments.

Recommendation of Change in Substance.

(1) Strike out, on line 2 "and", and insert a comma.

Insert after "affairs," on line 2, "and a commissioner of education."

The committee believe that the commissioner of education should be appointed by the governor, who will thus be directly responsible to the public

for the educational policy of the state government. The necessary changes have also been suggested under article X to carry out the principle suggested.

(2) Strike out the last two sentences of paragraph 4, lines 18 to 20, and insert: "Such appointee shall serve until the person so elected shall take office as prescribed by law."

The provision at the end of paragraph 4, that appointees to judicial vacancies shall serve until the first Monday of the January after such election is taken from article V, section 25, of the present constitution. We suggest the above change for the sake of uniformity. There is no reason why judges should be specially provided for in this connection.

On the question,

Will the committee adopt the section as reported?

Mr. REED. Mr. Chairman: May I ask you a question concerning line four. Perhaps this is not the proper place to take it up.

The CHAIRMAN. Line four?

Mr. REED. Line four. How are you going to tell what ten days before adjournment is until adjournment takes place? In other words, he makes an appointment, and then the general assembly decides to adjourn. The appointment may be within ten days of adjournment. I do not know that I can express it, but you are sort of setting up a standard that you do not have until you can look back at it. I am asking for information. That is not a criticism of the committee. I am asking for information as to whether that should not go out. I do not know.

The CHAIRMAN. The chair would entertain a motion to postpone the consideration of this section, this one amendment. The purpose in making this change in this section, Judge Reed, was to meet a recent decision of the supreme court in the appointment cases. I am informed by Mr. Hunter, who drafted this section to meet the situation created by that decision, that these are necessary words; but if Judge Reed will move that this be postponed for the present, we can consider this section hereafter.

Mr. REED. Mr. Chairman: I move that further consideration of this section be postponed.

Mr. GORDON. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE IV, SECTION 9.

The committee of the whole proceeded to the consideration of section 9 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

PARDONING POWER.

1 Section 9. The governor may remit fines and forfeitures, and may grant
2 reprieves, commutations of sentence and pardons, except in cases of impeach-
3 ment. He shall commute a sentence or grant a pardon only on the recommenda-
4 tion in writing of the lieutenant governor, the secretary of the commonwealth,
5 the attorney general and the secretary of internal affairs, or of any three of
6 them, after full hearing, upon due public notice and in open session. Such
7 recommendation, with the reasons therefor at length, shall be recorded and filed
8 in the office of the secretary of the commonwealth.

NOTE.

Source: Article IV, section 9, which reads:

"He shall have power to remit fines and forfeitures, to grant reprieves, commutations of sentence and pardons, except in cases of impeachment; but no pardon shall be granted, nor sentence commuted, except upon the recom-

mendation in writing of the lieutenant governor, secretary of the commonwealth, attorney general and secretary of internal affairs, or any three of them, after full hearing, upon due public notice and in open session, and such recommendation, with the reasons therefor at length, shall be recorded and filed in the office of the secretary of the commonwealth."

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE IV, SECTION 10.

The committee of the whole proceeded to the consideration of section 10 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

POWER TO REQUIRE INFORMATION.

1 Section 10. The governor may require information in writing from the
2 executive officers of the state government with respect to their duties.

NOTE.

Source: Article IV, section 10, which reads:

"He may require information in writing from the officers of the executive department, upon any subject relating to the duties of their respective offices."

Changes in Substance: None.

Changes in Style: "Executive officers of the state government" has been used because the word "department" has been employed to mean a principal subdivision of the executive branch of the government.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE IV, SECTION 11.

The committee of the whole proceeded to the consideration of section 11 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

DUTY TO INFORM GENERAL ASSEMBLY.

1 Section 11. The governor shall, from time to time, give to the general
2 assembly information of the state of the commonwealth, and shall recommend to
3 its consideration such measures as he may judge expedient.

NOTE.

Source: Article IV, section 11, which reads:

"He shall, from time to time, give to the general assembly information of the state of the commonwealth, and recommend to their consideration such measures as he may judge expedient."

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE IV, SECTION 12.

The committee of the whole proceeded to the consideration of section 12 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

POWER TO ADJOURN OR CONVENE GENERAL ASSEMBLY.

1 Section 12. The governor, in case of disagreement between the two houses
2 of the general assembly with respect to the time of adjournment, may adjourn
3 them to such time as he may think proper not exceeding four months. He may
4 on extraordinary occasions convene the general assembly and he may convene
5 the senate for the transaction of executive business.

NOTE.

Source: Article IV, section 12, which reads:

"He may, on extraordinary occasions, convene the general assembly, and in case of disagreement between the two houses with respect to the time of adjournment, adjourn them to such time as he shall think proper, not exceeding four months. He shall have power to convene the senate in extraordinary session by proclamation for the transaction of executive business."

Changes in Substance: None.

Changes in Style: (1) The language of the present constitution suggests that the governor can only adjourn the general assembly if the two houses fail to agree upon the time of adjourning a special session. The principle that the governor's power extends to regular as well as to special sessions is made clear in the section as proposed.

(2) The words "by proclamation" are omitted because they add nothing to the sense of the section. The governor must necessarily convene by proclamation. There is no reason for stating this in connection with convening the senate and not in connection with convening both houses.

On the question,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE IV, SECTION 12-A.

The committee of the whole proceeded to the consideration of section 12-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

LIEUTENANT GOVERNOR.

1 Section 12-A. The lieutenant governor shall be chosen with the same qualifica-
2 tions, at the same time, in the same manner, and for the same term as the
3 governor. He shall not be eligible to the office of lieutenant governor for the
4 succeeding term. A contested election of lieutenant governor shall be conducted
5 in the same manner as a contested election of governor. The lieutenant governor
6 shall be president of the senate but shall have no vote unless the senate be equally
7 divided.

NOTE.

Source: (1) Article IV, section 4, which reads:

"A lieutenant governor shall be chosen at the same time, in the same manner, for the same term, and subject to the same provisions as the governor; he shall be president of the senate, but shall have no vote unless they be equally divided."

(2) Article IV, section 17, relative to contested elections, which has been transferred to article IV, section 5-B, omitting reference to the lieutenant governor, has, in the section here proposed been expressly applied to the lieutenant governor.

Changes in Substance: None.

Changes in Style: The requirement of article IV, section 4, of the present constitution, that the lieutenant governor shall be "subject to the same provisions as the governor" refers only to his ineligibility to re-election and to the method

of determining a contested election. Both have been expressly covered by the proposed new section and the indefinite phrase, "subject to the same provisions" has been dropped.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE IV, SECTION 13.

The committee of the whole proceeded to the consideration of section 13 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

VACANCY IN GOVERNORSHIP.

1 Section 13. If the office of governor shall be vacant the lieutenant governor
2 shall become governor. If the governor shall fail to qualify or shall be under a
3 disability, the powers, duties and emoluments of his office until the end of the
4 governor's term or until he shall qualify or his disability shall be removed shall
5 devolve on the lieutenant governor, or, if such person shall not be in office or
6 shall be under a disability, then on the secretary of the commonwealth, or, if his
7 office shall be vacant or he shall be under a disability, then on the attorney gen-
8 eral.

NOTE.

Source: Article IV, section 13, which reads:

"In case of death, conviction on impeachment, failure to qualify, resignation, or other disability of the governor, the powers, duties and emoluments of the office, for the remainder of the term, or until the disability be removed, shall devolve upon the lieutenant governor."

Changes in Substances: If, when the governorship becomes vacant, the lieutenant governor is dead or under a disability, the proposed new section provides that the office of governor shall devolve upon the secretary of the commonwealth, or, if he can not serve, upon the attorney general. This would substitute the federal system of succession by the chief executive's appointees for the present system of succession by the president pro tempore of the senate as provided in article IV, section 14, of the present constitution. The change is recommended because the members of a deceased governor's official family are more likely to be in accord with and continue the policies of his administration than the president pro tempore of the senate.

Clarifying Amendment: The section as proposed makes it clear that if the office of governor becomes vacant, the lieutenant governor becomes governor and not merely acting governor; while, if the governor fails to qualify or is under a disability the lieutenant governor does not become governor but merely exercises the power of governor until the disability is removed or the governor's term expires.

Changes in Style: Instead of enumerating the causes of a vacancy, they have all been expressed in the clause, "if the office of governor shall be vacant."

Special Note to the commission by the committee on style.

Recommendation of Change in Substance.

Add to the section at the end thereof the following: "or if his office shall be vacant or he shall be under a disability, then on a person elected by a majority of the general assembly in joint session."

The adoption of this amendment will provide for every possible contingency that may arise in connection with a vacancy in the governorship.

On the question,

Will the committee adopt the section as reported?

Mr. REED. Mr. Chairman: I would like to ask for information respecting what you say there, "If the office of governor shall be vacant the lieutenant governor shall become governor. If the governor shall fail to qualify or shall be under a disability, the powers, duties and emoluments of his office until the end of the governor's term or until he shall qualify or his disability shall be removed shall

devolve on the lieutenant governor, or, if such person shall not be in office or shall be under a disability, then on the secretary of the commonwealth, or, if his office shall be vacant or he shall be under a disability, then on the attorney general." Suppose when his office is vacant and the governor does not qualify, and the lieutenant governor does not qualify, is there any such person in office as the secretary of the commonwealth? He is appointed, as I take it, by the new governor, and his term ceases when the old governor goes out. I just suggested it. I do not know how it could be possible, but it seems to me—

The CHAIRMAN. That is a matter of substance that would be well worth—

Mr. REED. It seems to me that as the old constitution has it, the governor or lieutenant governor, president pro tempore of the senate.

The CHAIRMAN. The commission adopted it in the form in which it now appears.

Mr. REED. I know it did. I am not reflecting on the committee, but it occurred to me in reading it that I did not see how this really would come out.

The CHAIRMAN. The recommendation of the committee would cover this, Judge Reed, in the words "or if his office shall be vacant or he shall be under a disability, than on a person elected by a majority of the members of the general assembly in joint session."

Mr. REED. That is added after "attorney general?"

The CHAIRMAN. Yes, sir, it is added there.

Mr. REED. Yes, I would not want to keep you from being governor.

The CHAIRMAN. Heaven forbid that I should be governor. I can not be because the constitution will not be adopted until long after I am out of office.

Mr. REED. You might be continued as governor.

The CHAIRMAN. It would be unexpected.

Mr. REED. Would you put that after the words "lieutenant governor?" In other words, if the governor's office is vacant, the lieutenant governor's office is vacant, then the two houses elect a person to take the position? It seems to me that it is not exactly a proper thing that a governor's position shall be filled by an appointive officer who is only there at the will of the person who appointed him.

The CHAIRMAN. The thought of the committee was that this fixes the list of the designated persons.

Mr. REED. I would move to amend by striking out the words on line five "or, if such person shall not be in office or shall be under a disability, then on the secretary of the commonwealth, or, if his office shall be vacant or he shall be under a disability, then on the attorney general." I move to strike that out and substitute the words the committee has suggested, which would then follow the words "lieutenant governor," and read thus: "or if his office shall be vacant or he shall be under a disability, then on a person elected by a majority of the members of the general assembly in joint session." The contingency is very remote that you will not have either a governor or a lieutenant governor, but if you don't have it seems to me that the general assembly should elect the person to fill the vacancy,

and it should not devolve on an appointive officer, no matter how exalted his position is; he is only there temporarily.

Mr. GORDON. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. FOX. Mr. Chairman: I would like to call Judge Reed's attention to the provision that was finally adopted by the Commission, whether that would not be better than the suggestion that he has made.

Mr. REED. Which was the final one adopted?

Mr. FOX. "If the lieutenant governor can not serve then the president pro tempore of the senate shall in like manner become governor——"

Mr. REED. Yes, and then you run down to the secretary of the commonwealth.

Mr. FOX. Yes, and stop there, and simply make it president pro tempore of the senate.

Mr. REED. That was the old section.

Mr. FOX. Yes, that was adopted by the commission.

The CHAIRMAN. Do you offer that as an amendment, Judge Fox?

Mr. FOX. Yes, I think that is preferable to the recommendation of the committee, and I move that.

Mr. REED. I accept that if it is not too irregular.

The CHAIRMAN. The secretary calls attention to the fact that there will have to be another amendment in order to relieve a conflict in another section, and the chair will entertain a motion that we postpone further consideration of this section until after luncheon and we can redraft the amendment in order to take care of this section.

Mr. REED. Mr. Chairman: I move that further consideration of this section be postponed for the present.

Mr. FOX. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE IV, SECTION 14.

The committee of the whole proceeded to the consideration of Section 14 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

VACANCY IN LIEUTENANT GOVERNORSHIP.

1 Section 14. If the office of lieutenant governor shall be vacant or if he shall
2 fail to qualify or shall be absent or under a disability, the powers, duties and emol-
3 uments of his office, except the right to succeed to the office of governor, shall de-
4 volve on the president pro tempore of the senate for the remainder of the
5 lieutenant governor's term or until his disability be removed.

NOTE.

Source: Article IV, section 14, which reads:

"In case of a vacancy in the office of lieutenant governor, or when the lieutenant governor shall be impeached by the house of representatives, or shall be unable to exercise the duties of his office, the powers, duties and emoluments thereof for the remainder of the term, or until the disability be removed, shall devolve upon the president pro tempore of the senate; and the president pro tempore of the senate shall in like manner become governor if a vacancy

or disability shall occur in the office of governor; his seat as senator shall become vacant whenever he shall become governor, and shall be filled by election as any other vacancy in the senate."

Changes in Substance: (1) The contingency of failure to qualify has been specially mentioned so that if a person elected lieutenant governor shall die before qualifying the duties of the lieutenant governorship will be exercised by the president pro tempore of the senate and not by the preceding lieutenant governor who, by article IV, section 17, of the present constitution, would hold office until his successor qualified.

(2) The power to succeed to the governorship is excepted from the powers thus devolving upon the president pro tempore of the senate because of the provisions of the preceding section.

Changes in Style: The causes of a vacancy have all been expressed in the clause "If the office of lieutenant governor shall be vacant."

On the question,

Will the committee adopt the section as reported?

The CHAIRMAN. This would require an amendment if the other change is to be made, and it will follow the same order—to be postponed for the present.

ARTICLE IV, SECTION 14-A.

The committee of the whole proceeded to the consideration of section 14-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

DETERMINATION OF DISABILITY.

1 Section 14-A. The fact of disability of the governor or of a person who
2 would otherwise be entitled to hold or assume the office of governor or the fact
3 of disability of the lieutenant governor shall be determined only by the supreme
4 court on the address of the general assembly agreed to by a majority of the
5 members of each house, or, if the general assembly be not in session, on the
6 written address of such majority.

NOTE.

Source: This is entirely new matter. It covers the situation which would arise if a governor or a lieutenant governor should have a prolonged illness or should temporarily or permanently lose his mind.

Under the present constitution, any executive officer except the governor, the lieutenant governor and the superintendent of public instruction, could be removed, in such a contingency, either by the appointing power or by the governor upon address of two-thirds of the senate (article VI, section 4), and a judge not a member of the supreme court could be removed by the governor on the address of two-thirds of each house of the general assembly (article V, section 15). The commission propose an appointed commissioner of education instead of the superintendent of public instruction (see article IV, section 8, and article X, section 1). This leaves only the governor, the lieutenant governor and the justices of the supreme court for whose removal no method is now provided except impeachment.

It is therefore important that there should be lodged in a permanent body the power to determine whether or not the disability of the governor or of the lieutenant governor is such as to justify filling the office with another person. The disability of a supreme court justice can not well be determined by his associates. Such disability impairs only one of a body of seven men. It therefore seems best not to attempt to provide for a determination of the fact of disability of a supreme court justice.

Special Note to the commission by the committee on style.

We have inserted the word "only" to indicate that no person shall be declared to be under a disability except by the action of the supreme court as stated in this section. We believe that this is the intention of the Commission. Unless the matter be left exclusively to the supreme court, there will still be room for dispute as to the existence of a disability and for doubt as to a method for solving the dispute.

On the question,

Will the committee adopt the section as reported?

Mr. REED. Of course, you will have to amend that if you amend the other to apply to any person who might be appointed.

The CHAIRMAN. I do not quite catch that, Judge Reed.

Mr. REED. That section, of course, follows the other. The fact that the disability of the governor or of the person who would otherwise be entitled to follow or assume the office of governor, but the fact of the disability of the lieutenant governor should be determined only by the supreme court. Of course, that was supposed to include the secretary of the commonwealth and the attorney general because they were within the possibility of being governor. That will have to be amended.

The CHAIRMAN. That section should also be postponed for the present.

Mr. FOX. I think not. If we adopt the suggestion which I made, that would still apply to the president pro tempore of the senate.

The CHAIRMAN. It may be well to consider all of these sections together.

Unless there is objection further consideration of this section will be postponed for the present.

ARTICLE IV, SECTION 18.

The committee of the whole proceeded to the consideration of section 18 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

SECRETARY OF THE COMMONWEALTH.

1 Section 18. The secretary of the commonwealth shall keep a record of the
2 official acts and proceedings of the governor. He may be required by either
3 house of the general assembly to exhibit his record with the papers, minutes and
4 vouchers relating thereto.

NOTE.

Source: Article IV, section 18, which reads:

"The secretary of the commonwealth shall keep a record of all official acts and proceedings of the governor, and when required lay the same, with all papers, minutes and vouchers relating thereto, before either branch of the general assembly, and perform such other duties as may be enjoined upon him by law."

Changes in Substance: None.

Changes in Style: The final clause in article IV, section 18, of the present constitution, has been omitted as surplusage. In the rest of the section the commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

Mr. REED. Mr. Chairman: In this section we have restricted the duties of the secretary of the commonwealth to keeping records of the official acts and proceedings of the governor. I take it that the secretary of the commonwealth has a number of very important duties. He is in charge of corporation matters, collects a lot of money and does a lot of things, you know, Mr. Attorney General, better than I, and yet he has been restricted by this section to act as a sort of a secretary to the governor in keeping records. Ought it not to be amended to include such other duties as are now or may be hereafter imposed upon him by law?

The CHAIRMAN. I think it ought to be; yes, sir.

Mr. REED. Mr. Chairman: I move to amend that by inserting the words, "and perform such other duties as may be enjoined upon him by law."

Mr. McCORMICK. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the committee adopt the section as amended?

It was adopted.

ARTICLE IV, SECTION 19.

The committee of the whole proceeded to the consideration of section 19 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

SECRETARY OF INTERNAL AFFAIRS

1 Section 19. Until otherwise prescribed by law, the secretary of internal
2 affairs shall exercise the powers and perform the duties prescribed by law when
3 this constitution becomes effective.

NOTE.

Source: Article IV., section 19, which reads:

"The secretary of internal affairs shall exercise all the powers and perform all the duties of the surveyor general, subject to such changes as shall be made by law. His department shall embrace a bureau of industrial statistics, and he shall discharge such duties relating to corporations, to the charitable institutions, agricultural, manufacturing, mining, mineral, timber and other material or business interests of the state as may be prescribed by law. He shall annually, and at such other times as may be required by law, make report to the general assembly."

Changes in Substance: The present constitution requires the performance of two duties by the secretary of internal affairs: the conducting of a bureau of industrial statistics and the rendering of annual reports to the general assembly. The other duties enumerated are those relating to the land office, which may be changed by law, and a miscellaneous collection of duties "as may be prescribed by law." The commission recommend that the duties of this office should be left entirely to statute, but that the present duties should continue until so modified.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

Mr. REED. Mr. Chairman: Is it possible to amend the law so as to change his duties if you adopt that? You say that "he shall exercise the powers and perform the duties as prescribed by law when this constitution becomes effective." Is that amendment possible?

The CHAIRMAN. It says and such other "duties as are now or may hereafter be imposed upon him by law."

Mr. REED. Mr. Chairman: That is all right.

Mr. GORDON. May I ask the chairman, was this section adopted by the commission?

The CHAIRMAN. The secretary will answer.

The SECRETARY. As adopted by the commission, it is found on page 244 of the report of June 23, 1920, and on page 113 of the report of May 20th. There are two different copies and it reads as follows: "The secretary of internal affairs shall exercise all the powers and perform all the duties of the surveyor general, subject to such changes as shall be made by law. His department shall

embrace a bureau of industrial statistics, and he shall discharge such duties relating to corporations, to the charitable institutions, the agricultural, manufacturing, mining, mineral, timber and other material or business interests of the state as may be prescribed by law. He shall biennially and at such other times as may be required by law, make report to the general assembly."

Mr. GORDON. See how the committee has deformed that section. The constitution of 1874 created this office, the secretary of internal affairs, and very properly set out the constitutional matters which this constitutional officer was to have in charge, and as the secretary just read it there, all that is stricken out, as this commission adopted it, all that is stricken out by the committee on style, and they say, "Until otherwise prescribed by law, the secretary of internal affairs shall exercise the powers and perform the duties prescribed by law when this constitution becomes effective." I suppose "by law" there means by statutory law. If so, then that would leave this constitutional office without any constitutional provision as to what the department was to be, absolutely leave it without any constitutional provision as to what the secretary of internal affairs should do, and make it entirely statutory. I do not believe that was within the province of the committee on style to so amend that section. It should have been left alone as it was. Let me read it again so that the commission may see just how wise the framers of the constitution of 1874 were when they created the secretary of internal affairs and defined his duties. He "shall exercise all the powers and perform all the duties of the surveyor general, subject to such changes as shall be made by law, his department," on the creation of his department, "shall embrace a bureau of industrial statistics, and he shall discharge such duties relating to corporations, to the charitable institutions, agricultural, manufacturing, mining, mineral, timber and other material or business interests of the state as may be prescribed by law. He shall annually, and at such other times as may be required by law, make report to the general assembly." If you adopt this section as this committee on style has reported it out, you will have a constitutional office without any constitutional definition as to the duties of the office or the scope of the department.

The CHAIRMAN. I think that is so, Judge Gordon. I think it would be well for it to be amended. That thought did not occur to the committee, or at least it did not occur to me. Of course, I am only speaking for myself. Your thought is these duties are constitutionally prescribed, and that this does not carry with it these constitutional duties?

Mr. GORDON. Yes, sir; that is it.

The CHAIRMAN. You make motion to substitute for the section the section as it was adopted by the commission originally? I think that ought to be done.

Mr. GORDON. Mr. Chairman: I make that motion, sir.

Mr. McCORMICK. I second the motion.

On the question,

Will the committee agree to the motion?

Mr. McCORMICK. Does that include all the duties that have been enumerated in the section that has just been read?

The CHAIRMAN. Yes, sir.

Mr. McCORMICK. Mr. Chairman: In the debate here was not some question raised as to whether or not these duties were important today, and whether or not there should be some revision of the duties of the secretary of internal affairs? In other words, there is a general feeling throughout the state that the secretary of internal affairs as now contemplated is not of sufficient importance to maintain it.

The CHAIRMAN. My own recollection is, Mr. McCormick, the thought was to so extend the duties, to add other duties, that it might become a branch of the government of greater service to the government. While I agree with Judge Gordon that it is not in its proper form, yet in changing it we ought to be careful to change it by putting back all the old duties which are now obsolete.

My recollection, from my official relation with the office of secretary of internal affairs, convinces me that none of the duties are obsolete. They may be expressed in a sort of an obsolete way—the duties of the surveyor general, and so on. The secretary of internal affairs is really a very important office in the state government, it has all the land records, and it gathers statistics for the state, and it is functioning better now than ever before in my day. I just received a report from the bureau of industrial statistics that is a most complete and striking report; but Judge Gordon's proposition to insert certain—.

Mr. GORDON. Whether it ought to be maintained or altered is another question.

The CHAIRMAN. Then the motion is to substitute for the section as here recommended the section as heretofore adopted by the commission?

Mr. GORDON. Yes, sir.

On the question recurring,

Will the committee agree to the motion?

It was agreed to.

ARTICLE IV, SECTION 20.

The committee of the whole proceeded to the consideration of section 20 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

SECTION 20. SUPERINTENDENT OF PUBLIC INSTRUCTION.

NOTE.

Omitted.

In the present constitution this section reads:

> "The superintendent of public instruction shall exercise all the powers and perform all the duties of the superintendent of common schools, subject to such changes as shall be made by law."
>
> The section is omitted because it is obsolete, as the officer of superintendent of common schools was abolished by the adoption of the present constitution, and also because it conflicts with the proposed provisions of article X, section 3-A, creating a state council of education.

On the question,

Will the comittee adopt the report of the committee on style to omit this section?

The CHAIRMAN. The secretary calls my attention to a thought which I would like to bring before the commission. The commission adopted a complete educational section. It also adopted a section

providing that the commissioner of education shall exercise all the powers and perform all the duties of the superintendent of common schools, subject to such changes as shall be made by law. When we came to the study of the language in connection with the general educational section as it was adopted there was a conflict, it seemed. Therefore, the question is, shall section 20 be omitted from the constitution in view of the fact that it is all taken care of in the separate educational section.

Mr. GORDON. Mr. Chairman: May I ask you where the other section is?

The CHAIRMAN. The section as it was adopted April 10th, in the article on education.

Mr. GORDON. Do I understand by virtue of that, the office of superintendent of education is abolished?

The CHAIRMAN. We have changed it to commissioner of education, and it has been changed in the preceding section to commissioner of education, in order to make the departments have the same title.

Mr. SULZBERGER. How is he appointed?

The CHAIRMAN. He shall be appointed by the governor, and this section would have to be amended when we reach it to provide for taking away the power of appointment by the state council of education, because we had already acted in the matter before you came in providing for his appointment by the governor.

Mr. GORDON. Mr. Chairman: This section that you refer me to provides for the selection of the commissioner by the governor, would it?

The CHAIRMAN. That would have to be done to correspond with what we have already done this morning, to provide for his appointment by the governor.

On the question recurring,

Will the committee adopt the report of the committee on style to omit this section?

It was adopted.

ARTICLE IV, SECTION 21.

The committee of the whole proceeded to the consideration of section 21 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

AUDITOR GENERAL AND STATE TREASURER.

1 Section 21. The auditor general and the state treasurer shall be chosen by
2 the electors of the commonwealth. Each shall hold his office for four years and
3 neither shall be eligible for the succeeding term.

NOTE.

Source: Article IV, section 21, which reads:

"The terms of the secretary of internal affairs, the auditor general, and the state treasurer shall each be four years; and they shall be chosen by the qualified electors of the state at general elections, but a state treasurer, elected in the year one thousand nine hundred and nine shall serve for three years, and his successors shall be elected at the general election in the year one thousand nine hundred and twelve, and in every fourth year thereafter. No person elected to the office of auditor general or state treasurer shall be capable of holding the same office for two consecutive terms. (Amendment of November 2, 1909.)

Change in Substance: The secretary of internal affairs is omitted because it is recommended that his office be made appointive. See note to article IV, section 8, as proposed.

Changes in Style: The words "at general elections" are omitted because this requirement is stated in article XII, section 3-A.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE IV, SECTION 21-A.

The committee of the whole proceeded to the consideration of section 21-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

STATE CONTRACTS.

1 Section 21-A. A member of the general assembly or an officer or employe of
2 the state government shall not be interested in selling or leasing property to the
3 state government or in rendering thereto for compensation services other than his
4 official services.

NOTE.

Source: Part of article III, section 12:

"* * * * no member or officer of any department of the government shall be in any way interested in such contracts" (contracts for stationery, printing, paper and fuel used in the legislative and other department of the state government, for printing and binding and for repairing and furnishing the halls and rooms used by the general assembly and its committees) * * *."

Changes in Substance: The section proposed extends the principle that an officer shall not be interested in contracts with the state government to all contracts for the selling or leasing of property or in rendering to the state government for compensation services other than official services. The present constitution merely prevents the officer having an interest in contracts for printing and binding for the state government and supplying furnishings and fuel for the capitol buildings, repairs thereto and paper and stationery for the state government.

The section as proposed extends the prohibition to all employes of the state government as well as to all officers. The present constitution confines the prohibition to officers.

Special Note to the commission by the committee on style.

As adopted by the Commission, this section read:

"No member of the general assembly and no officer or employe of a department of the state government shall be interested in any contract with the commonwealth of Pennsylvania or in furnishing thereto any material or supplies."

The language of the commission's draft has been changed so as to prohibit an interest in the sale of real estate to the state government. The word "contract" has been omitted because it would include state bonds. Both of these changes are made to carry out what we believe to be the intention of the commission.

On the question,

Will the committee adopt the section as reported?

Mr. PINCHOT. Mr. Chairman: I am not enough of a lawyer to know whether the wording as submitted by the committee on style would prevent the making of contracts with the state by a member of the state government. It speaks of selling or leasing property, but does that cover contracts?

The CHAIRMAN. I think it might; therefore this wording was suggested. In the acquiring of forest land you may run up against the question that it was owned by a member of the general assembly for instance, and no contract could be with him.

Mr. PINCHOT. That is not the point. The point I was going to make is that the revised section differs from that adopted by the commission in not specifically preventing a member of government from having a contract with the state of Pennsylvania, for instance, to build a bridge or anything of that sort.

Mr. GORDON. Don't you think that the section as adopted by the commission before the committee on style mutilated it is an excellent one?

Mr. PINCHOT. I do.

Mr. GORDON. I will read the section: "No member of the general assembly or officer or employe of a department of the state government shall be interested in any contract with the commonwealth of Pennsylvania or the furnishing thereto of any material or supplies." Now this committee changes it thus: "A member of the general assembly or an officer or employe of the state government shall not be interested in selling or leasing property to the state government or in rendering thereto for compensation services other than his official services." It seems to me this is rather a limited and impotent section.

Mr. McCORMICK. Mr. Chairman: The committee on style explained that the word "contract" was omitted because it would include state bonds.

Mr. GORDON. I do not know why it should not begin with the negation "No member" instead with the affirmative "A member."

The CHAIRMAN. That was one of the rules of style that we adopted. We just followed the words because it was intended to make this more comprehensive. It may not do so.

Mr. GORDON. I do not think it does make it more comprehensive.

Mr. SULZBERGER. It was intended to be excepted.

The CHAIRMAN. Do I understand that you move to make the substitution, Judge Gordon?

Mr. GORDON. Yes, sir. I move that the section as adopted by the commission shall stand.

Mr. FOX. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. REED. Mr. Chairman: May I inquire what is the sacredness of state bonds that they are excepted? It says the word "contract" is stricken out because it would include state bonds.

Mr. GORDON. Yes, but this is a motion to adopt the old constitution. I do not think anything is excepted.

The CHAIRMAN. Somebody when we considered this gave an illustration of what might be prohibited. It does not occur to me now, and I do not remember what it was.

Mr. REED. It would prohibit some officer from going on a bond. Well, that would be a good thing, would it not?

The CHAIRMAN. I remember, Judge Reed, that this was suggested; that under the section the state officials could not own the bonds of the state. That was not intended. What was intended was that he should not be concerned in selling property to the state.

Mr. REED. Do you suppose that any court would hold that that was within this provision, that he could not buy a bond on the market? It could prevent him from dealing directly with the state.

Mr. SULZBERGER. Suppose the state had an issue of bonds and he subscribed.

Mr. PINCHOT. Mr. Chairman: I want to just state that I have re-read this section. Something had escaped me, and I am now clear in my mind. I believe the section as recommended by the committee on style is better than the other, and I shall vote for the section recommended by the committee on style.

Mr. GORDON. Fluctation in the commissioner of forestry.

On the question recurring,

Will the committee agree to the motion of Judge Gordon?

It was agreed to.

Mr. THORPE. May I say a word? I once read in a book that a court that gave the reason for its decisions was lost, and that seems to be the trouble with the committee on style.

RECESS.

Mr. REED. Mr. Chairman: I move that the committee do now take a recess until two o'clock P. M.

Mr. McCORMICK. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 1.10 o'clock P. M., the committee of the whole took a recess until 2 o'clock P. M.

AFTER RECESS.

The committee of the whole reconvened at 2 o'clock P. M.

The Chairman, William I. Schaffer, in the chair.

ARTICLE IV, SECTION 21-B.

The committee of the whole proceeded to the consideration of section 21-B as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

PUBLIC PRINTING AND SUPPLIES.

1 Section 21-B. The printing and binding for the state government shall be per-
2 formed under contract or by the state government. Furnishings and fuel for the
3 capitol buildings, and paper and stationery for the state government shall be pro-
4 cured under contract awarded to the lowest responsible bidder and subject to the
5 approval of the auditor general and of the state treasurer.

Source: Part of article III, section 12, which reads:

> "All stationery, printing, paper and fuel used in the legislative and other departments of government shall be furnished, and the printing, binding and distributing of the laws, journals, department reports and all other printing and binding, and the repairing and furnishing the halls and rooms used for the meetings of the general assembly and its committees, shall be performed under contract to be given to the lowest responsible bidder below such maximum price and under such regulation as shall be prescribed by law; * *."

Changes in Substance: (1) The state government is permitted to do its own printing and binding instead of being required to let all such work on contract. This would permit a change in the system if a change should seem desirable.

(2) "Fuel used in the legislative and other departments of government" has been changed to "fuel for the capitol buildings" because that is the principal place of its use where procuring by contract is both feasible and prudent.

(3) The requirement in regard to repairs of the halls and rooms of the general assembly is omitted because the state is now in a position to do its own repair work at the capitol buildings.

(4) The provision that every contract must be at a figure below a maximum price prescribed by law is omitted, because the Commission believe that the public interests will be entirely protected by requiring the contract to be awarded only to the lowest responsible bidder and to be approved by the auditor general and by the state treasurer.

(5) The approval of the governor is dispensed with because in practice his approval has necessarily become a mere matter of routine involving no real personal consideration of the proposed contract.

Changes in Style: (1) The arrangement of clauses has been altered so as considerably to shorten the section.

(2) The specific reference to regulations prescribed by law has been omitted as unnecessary.

Special Note to the commission by the committee on style.

Recommendation for Change in Substance.

Alter to read:

The printing and binding for the state government shall be performed under contract or by the state government. Furnishings and fuel for the capitol buildings and paper and stationery for the state government shall be *made by the state government or* procured under contract. *Contracts for work or material designated in this section* shall be awarded to the lowest responsible bidder and subject to the approval of the auditor general and of the state treasurer.

Your committee believe that the state should have the right to make the furniture for the capitol buildings and the paper and stationery used by it, in its penal or other institutions, as well as produce its fuel for the capitol buildings on lands owned by the state. The amendment suggested will, if adopted, remove all possible constitutional objections to the state government adopting this method of obtaining the material designated, if in any case it is found desirable to do so.

On the question,

Will the committee adopt the section as reported?

Mr. GORDON. Does it require a motion to substitute the recommendation of the committee for the clause as reported out?

The CHAIRMAN. The motion will be in order,

Mr. GORDON. I say, does it require a motion?

The CHAIRMAN. I think not sir. We are considering it under a general motion to adopt the recommendations of the committee as they come up in order to save time.

Mr. GORDON. I move to substitute the recommendation of the committee on style for the section as reported out.

Mr. REED. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. GORDON. Mr. Chairman: I think the whole purpose of the recommendation of the committee is commendable in all respects and especially the provision that the state itself may perform these various duties. It gives an opportunity for the employment of prisoners, and also the provision that the contract for work or service shall be awarded to the lowest responsible bidder abolishing the maximum price system of the old constitution, and at the same time extremely desirable, and altogether I think this clause is better drawn than the one adopted by the commission itself, and all its purposes are commendable. I am in favor of its adoption.

Mr. REED. I think the language might be improved, notwithstanding the wording, furnishings and fuel shall be made by the state government; paper and stationery shall be made by the state government. What does that mean?

The CHAIRMAN. Shall be made by the government.

Mr. REED. You know you don't make furnishings and fuel you don't make paper and stationery.

Mr. GORDON. Yes, it is permitted to be done.

Mr. REED. Furnishings and fuel shall be made by the state government?

Mr. GORDON. That means this, that the state government at its penal institutions may make furnishings, it may cause binding to be done by the convicts, it may manufacture paper and stationery.

Mr. REED. I understand that, but it is made by the state government?

Mr. GORDON. What would you substitute then?

Mr. REED. It seems to me that you could make the furnishings and fuel. It may be the right word, but it does not sound right.

The CHAIRMAN. The thought in the mind of the committee was that expressed by Judge Gordon. Furnishings, and so forth, for the state shall be made by the state government in the institutions, penal institutions, of the state government. A number of these are now made that way.

Mr. REED. If you will say made or produced.

The CHAIRMAN, I think that is all right. We would understand it.

Mr. REED. If you will say made or produced I will understand it.

Mr. CHAIRMAN. I move that the words "or produced" be inserted after the word "made."

Mr. GORDON. I accept that.

On the question,

Will the committee agree to the substitute as amended?

It was agreed to.

ARTICLE IV, SECTION 22.

The committee of the whole proceeded to the consideration of section 22 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

SEAL.—COMMISSIONS.

1 Section 22. The present great seal of Pennsylvania shall be the seal of the
2 commonwealth. Commissions shall be in the name and by the authority of the
3 commonwealth of Pennsylvania. They shall be sealed with the state seal and
4 signed by the governor.

NOTE.

Source: Article IV, section 22; which reads:

"The present great seal of Pennsylvania shall be the seal of the state. All commissions shall be in the name and by authority of the commonwealth of Pennsylvania, and be sealed with the state seal and signed by the governor."

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE V, SECTION 1.

The committee of the whole proceeded to the consideration of section 1, as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

JUDICIAL POWER.

1 Section 1. The judicial power of the commonwealth shall be vested in a
2 supreme court, a superior court, in courts of common pleas, courts of oyer and
3 terminer and general jail delivery, courts of quarter sessions of the people,
4 orphans' courts, justices of the peace, and in other courts and judicial officers
5 as prescribed by law.

NOTE.

Source: Article V, section 1:

"The judicial power of this commonwealth shall be vested in a supreme court, in courts of common pleas, courts of oyer and terminer and general jail delivery, courts of quarter sessions of the peace, orphans' courts, magistrates' courts, and in such other courts as the general assembly may from time to time establish."

Changes in Substance: The superior court is added as a constitutional court.

Changes in Style: The words "justices of the peace and in other courts and judicial officers" have been used as more accurate than "magistrates' courts and such other courts."

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE V, SECTION 2.

The committee of the whole proceeded to the consideration of section 2 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

SUPREME COURT.

1 Section 2. The supreme court shall consist of seven judges learned in the law,
2 who shall have the title of justice, chosen by the electors of the commonwealth.
3 They shall hold office for twenty-one years and shall not again be eligible.
4 The judge longest in continuous service shall be chief justice.

NOTE.

Source: Article V, section 2:

"The supreme court shall consist of seven judges, who shall be elected by the qualified electors of the state at large. They shall hold their offices for the term of twenty-one years, if they so long behave themselves well, but shall not be again eligible. The judge whose commission shall first expire shall be chief justice, and thereafter each judge whose commission shall first expire shall in turn be chief justice."

Changes in Substance: The requirement that the justices of the court shall be learned in the law has been added.

Changes in Style:

(1) The words "who shall have the title of justice" are used because the members of the supreme court are always so designated in practice, although it is desirable that they should be considered "judges" on account of numerous other provisions of the constitution referring to all judges, including the members of the supreme court.

(2) The language of the final sentence is more accurate than that of the present constitution. "The judge whose commission shall first expire" is frequently a judge appointed to fill a vacaancy and holding a commission which will expire at the end of the next session of the senate.

On the question,

Will the committee adopt the section as reported?

Mr. REED. Is it necessary to have a motion?

The CHAIRMAN. No, sir.

Mr. GORDON. May I ask as a matter of dialectics, he shall hold office for twenty-one years and shall not again be eligible," what does

that mean? Does it mean—I guess I know what it means, that he shall not again be eligible for re-election, but as that sentence stands it is a bad draftmanship, it is bad English, it has no meaning to it. "Again eligible" that "he shall not again be eligible." Now, the committee here has changed the language of the old constitution, but why not restore it, "shall not be eligible for re-election?" I think as it stands it is an incomplete sentence. What does eligible relate to so far as the meaning of that sentence is concerned?

The CHAIRMAN. We had quite a debate over that, but a number of us were voted down because this is the exact language of the constitution of 1874. Of course, I may be wrong as to the section.

Mr. GORDON. Is that the constitution of 1874?

Mr. FOX. The chairman is right.

Mr. GORDON. Then there is a little paint on my eye-lids.

On the question recurring,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE V, SECTION 3.

The committee of the whole proceeded to the consideration of section 3 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

JURISDICTION OF SUPREME COURT.

1 Section 3. The jurisdiction of the supreme court shall extend over the state.
2 The court shall have original jurisdiction only in cases of injunction where a
3 corporation is a partly defendant, of habeas corpus, of mandamus to courts of
4 inferior jurisdiction and of quo warranto as to officers of the state government
5 whose jurisdiction extends over the state. The court shall have appellate
6 jurisdiction by appeal, certiorari or writ of error in all cases as prescribed by
7 law. Each judge of the court may sit as a judge of courts of oyer and terminer
8 and general jail delivery or of a court of quarter sessions of the peace.

NOTE.

Source: Article V, section 3:

"The jurisdiction of the supreme court shall extend over the state, and the judges thereof shall, by virtue of their offices, be justices of oyer and terminer and general jail delivery in the several counties; they shall have original jurisdiction in cases of injunction where a corporation is a party defendant, of habeas corpus, of manadamus to courts of inferior jurisdiction, and of quo warranto as to all officers of the commonwealth whose jurisdiction extends over the state, but shall not exercise any other original jurisdiction; they shall have appellate jurisdiction by appeal, certiorari or writ of error in all cases, as is now or may hereafter be provided by law."

Changes in Substance: None.

Changes in Style: (1) Original jurisdiction in the enumerated cases is vested in the court itself. This accords with actual practice and with the interpretation put upon the language of the present constitution by the supreme court. See Wheeler v. Phila., 77 Pa., 338; Commonwealth v. Hartrant, 77 Pa. 154; Clark v. Borough of Washington, 145 Pa. 566.

(2) The final clause of the present constitution is abbreviated by omitting mention of the particular methods by which appellate jurisdiction is exercised.

On the question,

Will the committee adopt the section as reported?

Mr. REED. May I ask if that has been changed from the original section? Under the original section the judges had jurisdiction, "they have original jurisdiction," and so forth. As this is worded the court shall have original jurisdiction only in cases of injunction or habeas corpus, mandamus to courts of inferior jurisdiction, and

so forth. Does that mean that the whole court has the right to grant a writ of habeas corpus when in session, or can one judge grant a writ of habeas corpus?

The CHAIRMAN. That is well worthy of considering, Judge Reed, and may I just say that Mr. Alter was designated to give some thought to that and confer with the judges of the supreme court and his illness prevents his being here but I think——.

Mr. REED. Well, seems to me that the individual judge ought to have the right to issue a writ and not the whole court.

Mr. FOX. I would move to substitute the section which was originally adopted by the commission, which follows the language of the constitution of 1874.

Mr. REED. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE V, SECTION 3-G.

The committee of the whole proceeded to the consideration of section 3-G as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

REGULATIVE POWER AND DUTY OF SUPREME COURT.

1 Section 3-G. The supreme court shall regulate procedure in courts of record
2 and shall adapt the processes of justice to the necessities of all litigants.
3 In the discharge of these duties it may regulate forms of action, pleading and
4 practice, proof, the keeping of judicial records, and the conditions under which
5 fees and costs may be remitted and counsel assigned without expenses to litigants,
6 and may regulate the activities of any public or private agency rendering
7 legal aid.
8 Regulations, when promulgated by the chief justice, shall have the force of
9 law until modified by law and shall operate to repeal laws theretofore enacted
10 inconsistent with such regulations.
11 Subject to law and to such regulations, courts of record shall have the
12 power to make their own rules.

NOTE.

Source: This is entirely new matter covering two principles:

(1) That the supreme court should regulate judicial procedure, and

(2) That the supreme court should specially regulate judicial procedure in behalf of the poor.

The commission recommend the embodiment of the first of these principles in the constitution because the supreme court is better fitted than the general assembly to adapt judicial procedure to changing conditions. A legislative body is not constituted for the consideration of such questions of detail as necessarily arise in connection with every kind of litigation. Accordingly the commission have recommended a system similar to that in use in England, where it has met with success and with unusual satisfaction. It will be observed that the force of the rules of the supreme court in this respect is made equal to that of statutes but no greater.

The commission also recommend that the supreme court should be directed to "adapt the processes of justice to the necessities of all litigants," and in this connection the proposed section provides for the regulation of "the activities of any public or private agency rendering legal aid." This is simply a necessary corollary to the power and duty with respect to the relief of poor litigants.

Special Note to the commission by the committee on style.

As previously adopted by the commission, this section was numbered 3-C.

On the question,

Will the committee adopt the section as reported?

The CHAIRMAN. The secretary informs me that this is the same verbiage that was adopted by the commission, as will be seen by

reference to that section. The secretary will read the section as it was adopted by the commission.

The secretary read the section as follows:

> It shall be the duty of the supreme court to regulate legal procedure in courts of record and to adopt the processes of justice to the necessities of all classes of litigants.
>
> In the discharge of the duty imposed by this section, the supreme court shall have the power to regulate forms of action, pleading and practice, proof, the way in which judicial records shall be kept, and the conditions under which fees and costs may be remitted and counsel assigned without expense to litigants; and to regulate and control the activities of any agency, public or private, rendering legal aid.
>
> Regulations when promulgated by the chief justice shall have the force of law until modified by the general assembly and shall operate to repeal all laws heretofore enacted inconsistent with such regulations.
>
> Courts of record shall have the power to make their own rules not inconsistent with such regulations or with general laws.

Mr. GORDON. I was not here when that was adopted by the commission; that is new to me. I would like to ask a question. In the second clause, "in the discharge of his duties the supreme court shall have power to regulate forms of action," that is all right; "pleading and practice," that is all right; "proof" what does that mean? Does that mean rules of evidence?

The CHAIRMAN. That is what we understand. Yes, sir.

Mr. GORDON. Rules of evidence?

The CHAIRMAN. Not rules of evidence, possibly in a certain sense, but how certain things may be proven.

Mr. GORDON. Method of proof.

The CHAIRMAN. Method of proof.

Mr. GORDON. Then I think it should be made perfectly clear because as it stands here I think it means evidence, rules of evidence.

The CHAIRMAN. My recollection of the debate on this question when it was before the commission, and that is verified by the secretary, is that this includes the method of proof and also the rules of evidence. If the supreme court should determine that the rules of evidence should be modified, they should do it rather than as it was done under the evidence act of 1887, justices being a more expert body of men to pass on the question as to how rules of evidence should be modified than the legislature. So it was intended that the whole subject of proof should be comprehended under that, if the supreme court should determine it to be the wise thing to do.

Mr. GORDON. Well the rules of evidence to-day are, of course, comprises in all the judicial decisions and practice and statutes, and which change in the rules of evidence made by this tribunal of seven members, unalterable rules of evidence, would be I am inclined to think, a very dangerous power to lodge with seven members. There is a provision in the constitution against special legislation touching on rules of evidence. "No special legislation shall be passed relating to rules of evidence;" but to-day the power to change the rules of evidence is solely with the legislature. Now, this is really a transference of that power. Probably it is concurrent, if that word has any judicial signifiance. Probably it is concurrent, but ought this Commission do that? Did it mean to take from the legislature the power to make rules of evidence and lodge it in seven judges? Well, I was not here, as I say, when this was passed. I think if I had been here I should have voted no, and my personal

inclination is that this is not a power to give to seven judges to determine in private what the rules of evidence shall be. I can not imagine a greater power imposed in a body than that, in a civil body, the power to change the rules of evidence under which the courts meet, witnesses are examined, evidence presented on which human rights and human liberties are dependent.

The CHAIRMAN. There is nothing before the commission except the section as it stands unless there is an amendment offered to it.

Mr. GORDON. I do not suppose there is an opportunity to amend this now. It stands as it is, or the old constitution stands as it is, or the recommendation of the committee stands as it is, but I suppose at some later stage it will be open for discussion.

The CHAIRMAN. No, sir. You could insert the word "method."

Mr. GORDON. I would be very glad to strike out the word proof if I have that power.

The CHAIRMAN. Surely, sir.

Mr. GORDON. I move to strike out the word "proof."

Mr. KELLY. I second the motion.

It seems to me that Judge Gordon is right about this, absolutely right. It is really taking a legislative function from the legislature and giving it to the judiciary, contrary to the very fundamental system of our government. If the supreme court can make rules of evidence, they are in fact making laws on the subject of evidence, and the passage of laws, of course, ought to be by the legislative branch of the government.

On the question,

Will the committee agree to the amendment?

It was agreed to.

On the question,

Will the committee adopt the section as amended?

It was agreed to.

ARTICLE V, SECTION 3-H.

The committee of the whole proceeded to the consideration of section 3-H as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

ADMINISTRATIVE POWER OF SUPREME COURT.

1 Section 3-H. The supreme court may require a judge of a court of common
2 pleas to hold in any district a court which he could hold in his own district.

NOTE.

Source: This is entirely new matter. It is intended to increase the flexibility of the judicial system by permitting the supreme court to relieve congestion in crowded districts.

Special Note to the commission by the committee on style.

As previously adopted by the commission, this section was numbered 3-F.

On the question,

Will the committee adopt the section as reported?

Mr. REED. Ought there be some provision to pay that judge's expenses?

The CHAIRMAN. He would be paid as under the statute which now exists providing for the payment of judges sitting in districts

other than their own, which is twenty dollars a day and expenses. This would give the supreme court an opportunity to assign a judge in a judical district where a judge is needed.

Mr. REED. It would require legislation to support it.

The CHAIRMAN. It may be that it does need the sanction of legislation.

Mr. GORDON. If this is intended to give power to the supreme court to assign a judge to the common pleas, to hold a court of common pleas in some district other than his own, where by reason of disability or death the judge of the district can not sit, well and good; but it would seem not to be limited to such an emergency, but to give to the supreme court the right to direct a judge of the court of common pleas to hold a court of common pleas in any district assigned him.

The CHAIRMAN. Yes, sir.

Mr. GORDON. Whether the judge elected in that district is competent to hold that court himself or not?

The CHAIRMAN. I do not imagine the supreme court would assign a judge to a district where the work was not hard.

Mr. GORDON. Ought there to be any doubt about it?

The CHAIRMAN. This was adopted by the commission in this language.

Mr. GORDON. I do not know; I was not here. I do not know why the supreme court should be allowed to supersede a sitting judge.

The CHAIRMAN. I do not either.

Mr. GORDON. A demand can be made on the supreme court, and the supreme court can assign a judge.

The CHAIRMAN. As I recall it the assignment can be made without the demand of the sitting judge in all instances if the public duty requires it.

Mr. GORDON. I can merely repeat that this clause gives the supreme court the right to require a judge of the common pleas to go into another district to sit and does not limit that to the request of the sitting judge or the disability or death of the sitting judge. I can see how we might have a supreme court which would exercise that power very autocratically, and recent events show that the country is not much in favor of autocracy, judicial, executive or legislative.

The CHAIRMAN. Does the gentleman desire to amend it in any respect?

Mr. GORDON: I would not know how to amend it without reflection.

Mr. REED. Mr. Chairman: Is it a matter of sufficient importance to go into the constitution? Can not the legislature authorize the supreme court to make appointments?

Mr. KELLY. Mr. Chairman: There is such a provision.

Mr. REED. Mr. Chairman: I move that the section be striken out

Mr. KELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE V, SECTION 3-I.

The committee of the whole proceeded to the consideration of section 3-I as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

SUPERIOR COURT.

1 Section 3-1. The superior court shall consist of seven judges learned in the
2 law, chosen by the electors of the commonwealth. They shall hold office for
3 twenty-one years and shall not again be eligible. The judge longest in con-
4 tinuous service shall be president judge.

NOTE.

Source: This is entirely new matter. The superior court is made a constitutional court. The provision in regard to the length of the term of a judge of the court, and the prohibition against re-election, are made similar to those which pertain to the judges of the supreme court.

Special Note to the commission by the committee on style.

As previously adopted by the commission, this section was numbered 3-A.

On the question,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE V, SECTION 3-J

The committee of the whole proceeded to the consideration of section 3-J as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

JURISDICTION OF SUPERIOR COURT.

1 Section 3-J. The superior court shall have jurisdiction as prescribed by law.

NOTE.

Source: This is entirely new matter, made necessary by the preceding section.

Special Note to the commission by the committee on style.

As previously adopted by the commission, this section was numbered 3-B.

On the question,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE V, SECTION 5-A.

The committee of the whole proceeded to the consideration of section 5-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

JUDICIAL DISTRICTS.

1 Section 5-A. The state shall be divided by law into judicial districts. A
2 county having fifty thousand inhabitants may constitute a separate district.
3 No county shall be divided in the formation of a district and no more than
4 four counties shall be included in a district.

NOTE.

Source: (1) Part of article V, section 5:

"Whenever a county shall contain forty thousand inhabitants it shall constitute a separate judicial district, and shall elect one judge learned in the law; and the general assembly shall provide for additional judges, as the business of the said districts may require. Counties containing a population less than is sufficient to constitute separate districts shall be formed into convenient single districts, or, if necessary, may be attached to contiguous districts as the general assembly may provide. * * *"

(2) Part of article V, section 4:

"* * * not more than four counties shall at any time be included in one judicial district organized for said courts."

Changes in Substance: The present constitution requires every county with a population of forty thousand to form a separate district. This is changed so that a county of fifty thousand will be permitted or obliged to become a separate district, according to the judgment of the law-making power.

Changes in Style: The commission's rules of style have been followed.

Special Note to the commission by the committee on style.

This section covers the provision of the last sentence of the first paragraph of section 4 as adopted by the commission—"Nor more than four counties shall at any time be included in one judicial district organized for such courts"—as well as the provisions of section 5 as adopted by the commission.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE V, SECTION 5-B.

The committee of the whole proceeded to the consideration of section 5-B as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

COURTS OF COMMON PLEAS.

1 Section 5-B. In each county there shall be a court of common pleas con-
2 sisting of one or more judges learned in the law, chosen by the electors of the
3 judicial district in which the county is situated. They shall hold office for
4 ten years. The judge longest in continuous service shall be the president
5 judge. The office of associate judge not learned in the law is abolished, but
6 associate judges in office when this constitution becomes effective shall hold
7 office for their unexpired terms.

NOTE.

Source: (1) Part of article V, section 4:

"Until otherwise directed by law, the courts of common pleas shall continue as at present established, except as herein changed; * * *"

(2) Part of article V, section 15:

"All judges required to be learned in the law, except the judges of the supreme court shall be elected by the qualified electors of the respective districts over which they are to preside, and shall hold their offices for the period of ten years, if they shall so long behave themselves well; * * *"

(3) Part of article V, section 5:

"* * * The office of associate judge, not learned in the law, is abolished in counties forming separate districts; but the several associate judges in office when this constitution shall be adopted shall serve for their unexpired terms."

Changes in Substance: (1) The commission suggest that the long-established practice in regard to the office of president judge be made part of the constitution for the sake of uniformity with the sections dealing with the other courts.

(2) The present constitution abolished the office of associate judge not learned in the law in counties forming separate districts. The commission recommend that this office should now be abolished in the twenty counties where it still exists, saving to the present associate judges the right to serve their unexpired terms.

Clarifying Amendments: The proposed new section states expressly that there shall be a court of common pleas in each county. The constitution of 1776 refers to such courts (see section the twenty-fourth), and the constitution of 1790, article V, section 4, expressly provided for such courts.

The commission recommend the insertion of this clause for the sake of clearness, believing that the system is satisfactory and that there will be no reason for abandoning it.

Changes in Style: The words "if they shall so long behave themselves well," in article V, section 15, are omitted as unnecessary. The constitution designates the way in which a judge may be removed from office. (See article XII, sections 3-F and 3-G as proposed.) When a definite term of office for a judge or other officer is prescribed, the incumbent of the office has a right to the office until his term expires, irrespective of his behavior, unless removed in one of the ways designated in the constitution.

Special Note to the commission by the committee on style.

This section includes all matters covered by section 4 as adopted by the commission down to the beginning of the last sentence, except that the provision for the removal of the judges by the governor on the address of the general assembly has been transferred to article XII, section 3-G, as proposed.

The provision that not more than five counties shall at any time be inincluded in one judicial district is transferred to section 5-A, which deals with judicial districts.

This section also includes the last sentence of section 5, as adopted by the commission, abolishing the office of associate judge not learned in the law.

On the question,

Will the committee adopt the section as reported?

Mr. GORDON. That portion of this clause added, "In each county there shall be a court of common pleas," is that true?

The CHAIRMAN. Yes, sir.

Mr. GORDON. Does that mean—

The CHAIRMAN. It has always been understood that there was a court of common pleas in each county, but the judge of that court might sit for several counties.

Mr. GORDON. Does it mean that in a judical district composed of several counties that the judges shall hold a court of common pleas in each county of the district?

The CHAIRMAN. Yes, sir.

Mr. GORDON. And the court can not sit at one place only?

The CHAIRMAN. No, sir. That is the present practice.

Mr. GORDON. And this changes it?

The CHAIRMAN. This conforms with the present practice.

Mr. GORDON. But not in the existing constitution?

The CHAIRMAN. The judge holds court in every county of his district, and in some counties, Bradford county, I think, he holds court in two places. He holds two courts in this county by virtue of some special act.

Now, the chair would like to suggest something that has occurred to him since this was drafted, that is whether there ought to be a conclusive conferring of chancery powers.

On the question recurring,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE V, SECTION 5-C.

The committee of the whole proceeded to the consideration of section 5-C as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

JURISDICTION OF COURTS OF COMMON PLEAS.

1 Section 5-C. The court of common pleas of each county shall have original
2 jurisdiction in civil cases except where such jurisdiction shall be vested by law
3 in other courts. It shall have power to issue writs of certiorari to justices of
4 the peace and to inferior courts not of record and, except where otherwise
5 prescribed by law shall have jurisdiction in appeals from justices of the peace.
6 It shall have such other jurisdiction as may be prescribed by law.

NOTE.

Source: (1) Part of article V, section 9:

"Judges of the courts of common pleas learned in the law * * * within their respective districts shall be justices of the peace as to criminal matters."

(2) Article V, section 10:

"The judges of the courts of common pleas, within their respective counties, shall have power to issue writs of certiorari to justices of the peace and other inferior courts not of record, and to cause their proceedings to be brought before them, and right and justice to be done."

(3) Article V, section 20:

"The several courts of common pleas, besides the powers herein conferred, shall have and exercise within their respective districts, subject to such changes as may be made by law, such chancery powers as are now vested by law in the several courts of common pleas of this commonwealth, or as may hereafter be conferred upon them by law."

Changes in Substance: (1) All original civil jurisdiction not vested by law in other courts is expressly vested in the courts of common pleas.

(2) Jurisdiction in appeals from justices of the peace is expressly conferred upon the courts of common pleas except where otherwise prescribed by law. The present constitution gives to a court of common pleas the right to issue a certiorari to justices of the peace and magistrates, but gives to the litigant no right of appeal.

Clarifying Amendments: Under the present constitution, it is not clear whether chancery jurisdiction can be given to courts other than the courts of common pleas and the orphans' courts. An orphans' court, by its nature, which may be implied from its name, may and does have chancery powers. (See also Morgan v. Reel, 213 Pa., 81.) Article V, section 20, makes the chancery jurisdiction of the courts of common pleas subject to such changes as may be made by law. The language of the section makes it probable but not certain that those courts could be deprived by law of all chancery jurisdiction. There is nothing in the section to prevent other courts being vested with chancery jurisdiction.

Article V, section 10, of the present constitution, gives to the judges of the courts of common pleas the power to issue writs of certiorari to justices of the peace and other inferior courts not of record. Again, there is nothing in the section to make the power vested in the courts of common pleas an exclusive power.

On the other hand, article V, section 26, provides: "* * * the general assembly is hereby prohibited from creating other courts to exercise the powers vested by this constitution in the judges of the courts of common pleas and orphans' courts. The effect of this section is uncertain. Either it means that a power vested expressly or impliedly as an exclusive power is exclusive, or it means that any power, whether it is vested as an exclusive power or not, is to be regarded as an exclusive power.

In order to avoid the uncertainty arising from section 26, we have recommended that it be omitted.

The section as proposed is so worded as to vest in the common pleas courts jurisdiction to issue writs of certiorari to justices of the peace and inferior courts not of record. This accords with article V, section 10, of the present constitution. On the other hand, there will be nothing to prevent other courts being vested by law with a similar power.

We have omitted all specific reference to "chancery powers," the result being that the right to exercise such powers will be derived from the words: "It shall have such other jurisdiction as may be prescribed by law. Chancery jurisdiction being included under "other jurisdiction," it is clear that it also may be conferred on other courts. This accords with article V, section 20, of the present constitution.

Changes in Style: The commission's rules of style have been followed.

Special Note to the commission by the committee on style.

This section deals with all matters pertaining to the jurisdiction of the common pleas courts found in section 4 as adopted by the commission. That part of the note dealing with clarifying amendments will explain the reason for the language used by your committee.

On the question,

Will the committee adopt the section as reported?

Mr. GORDON. Mr. Chairman: In that section the provision of the "Judges of the courts of common pleas learned in the law within their respective districts shall be justices of the peace as to criminal matters" seems to be omitted.

The CHAIRMAN. Inadvertently omitted. The chair would also like to ask the thought of the commission as to whether or not there ought to be express conferring of chancery powers, whether the chancery powers ought to be conclusively conferred upon the courts of common pleas?

Mr. FOX. Mr. Chairman: I move to amend section 5-C by adding at the end, "The several courts of common pleas besides the powers herein conferred shall have and exercise within their respective districts, subject to such changes, as may be made by law, such chancery powers as are now vested by law in the several courts of common pleas of this comonwealth, or as may hereafter be conferred upon them by law."

Mr. GORDON. Mr. Chairman: I second the amendment.

On the question,

Will the committee agree to the amendment?

Mr. GORDON. Might I inquire whether the section as adopted, by the commission conferred chancery powers?

Mr. FOX. Yes, sir.

Mr. GORDON. Why did the committee leave it out?

The CHAIRMAN. I think it was inadvertenly omitted.

Mr. GORDON. Oh, inadvertently.

The CHAIRMAN. I might say, so far as I am concerned, I thought it was in.

Mr. GORDON. Of course, it ought to be in, sir.

Mr. FOX. It ought to be exclusive except for some purposes. The orphan's court has no chancery power to grant an injunction, but that is statutory, is it not?

The CHAIRMAN. Yes, sir.

On the question recurring,

Will the committee agree to the amendment?

It was agreed to.

The CHAIRMAN. The chair would like to suggest that the section ought to be amended by including in the section the power of the judges of common pleas to sit as justices in criminal matters. It is a very important thing in times of great stress. We have had to call on them more than once in the judicial district in which I practice law. You had to use them in Allegheny county recently, I think. Ought not this section to be amended by adding to it the first sentence, "Judges of the courts of common pleas, learned in the law, within their respective districts, shall be justices of the peace as to criminal matters;" that is, they shall still have the right to sit as committing magistrates in times of great stress. That is a very vital thing, it seems to me.

Mr. GORDON. Mr. Chairman: I understand you to say it was omitted by inadvertence.

The CHAIRMAN. Yes, sir.

Mr. GORDON. Mr. Chairman: I move "power to sit within their respective districts as justice of the peace in criminal matters," shall be included within this section.

Mr. REED. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question recurring,

Will the committee adopt the section as amended?

Mr. REED. Mr. Chairman: May I ask the secretary for information? Is this section 4 of article V in the original draft broken up into different sections, or what has become of it? I say is it broken up into different section and distributed like type all over the constitution, or what has become of it?

The SECRETARY. It has been broken up.

Mr. REED. The whole section is very much abbreviated.

The SECRETARY. Under section 4, "Common Pleas Courts," the way in which it is distributed between sections 5-A and 5-B and the reason for distributing are explained being, as I understood it, to make the method of treatment of the common pleas conform with the method of treatment of the other courts of the constitution, first providing for the courts and then in a separate section providing for their jurisdiction.

Mr. REED. Do you think you have got it all in here with reference to the courts of common pleas, that is the question, with the exception of that part with reference to the justice of the peace?

The SECRETARY. The secretary's understanding from his records is that we have all in except, as recorded here, the amendment correcting an omission, the amendment conferring chancery powers as it now exists as a constitutional power on the common pleas court.

Mr. REED. May I ask whether Judges Fox's amendment to strike out that last sentence, "It shall have such other jurisdiction as may be prescribed by law," or does that still stay in?

The CHAIRMAN. It was not intended to strike that out. Your amendment was intended to come in ahead of that.

On the question recurring,

Will the committee adopt the section as amended?

It was adopted.

ARTICLE V, SECTION 6.

The committee of the whole proceeded to the consideration of section 6 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

SECTION 6. COURTS OF COMMON PLEAS OF PHILADELPHIA AND ALLEGHENY COUNTIES.

NOTE.

Omitted.

In the present constitution this section reads:

"In the county of Philadelphia all the jurisdiction and powers now vested in the district courts and courts of common pleas, subject to such changes as may be made by this constitution or by law, shall be in Philadelphia vested in five distinct and separate courts of equal and co-ordinate jurisdiction, composed of three judges each. The said courts in Philadelphia shall be designated respectively as the court of common pleas number one, number two, number three, number four, and number five, but the number of said courts may be by law increased from time to time, and shall be in like manner designated by successive numbers. The number of judges in any of said courts, or in any county where the establishment of an additional court may be authorized by law, may be increased, from time to time, and whenever such increase shall amount in the whole to three, such three judges shall compose a distinct and separate court as aforesaid, which shall be numbered as aforesaid. In Philadelphia all suits shall be instituted in the said courts of common pleas without designating the number of the said court, and the several courts shall distribute and apportion the business among them in such manner as shall be provided by the rules of court, and each court, to which any suit shall be thus assigned, shall have exclusive jurisdiction thereof, subject to change of venue, as shall be provided by law.

"In the county of Allegheny all the jurisdiction and powers now vested in the several numbered courts of common pleas shall be vested in one court of common pleas composed of all the judges in commission in said courts. Such jurisdiction and powers shall extend to all proceedings at law and in equity which shall have been instituted in the several numbered courts, and shall be subject to such changes as may be made by law, and subject to change of venue as provided by law.

"The president judge of said court shall be selected as provided by law. The number of judges in said court may be by law increased from time to time. This amendment shall take effect on the first day of January succeeding its adoption." (Amendment of November 7, 1911.)

The commission recommend (see article V, section 6-B), that the several numbered courts of the county of Philadelphia be consolidated. This has already been done in the county of Allegheny by constitutional amendment.

Special Note to the commission by the committee on style.

This section, as adopted by the commission, covered the following matters:

(1) The consolidation of the courts of Philadelphia. This is made the subject of section 6-B as reported by your committee.

(2) The provisions of the amendment of November 7, 1911, to the present constitution, providing for one court in Allegheny county. This court, as the result of the adoption of that amendment is now in existence. A special provision for it is therefore not necessary, as section 5-B as proposed provides one court of common pleas in each county.

(3) The provision of the present constitution that, in the counties of Philadelphia and Allegheny, the judges shall detail one or more of their number to hold courts of oyer and terminer and quarter sessions of the peace. Such separate provision for Philadelphia and Allegheny counties is unnecessary as section 6-C as proposed specifically requires that the judges of the court of common pleas in a county shall be judges of the court of oyer and terminer of quarter sessions of the peace.

On the question,

Will the committee adopt the report of the Committee on style to omit this section?

It was adopted.

ARTICLE V, SECTION 6-B.

The committee of the whole proceeded to the consideration of section 6-B as adopted by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

COMMON PLEAS COURT IN PHILADELPHIA.

Section 6-B. In the county of Philadelphia the jurisdiction of the several courts of common pleas shall be vested in one court of common pleas. Until otherwise prescribed by law, the courts shall be composed of fifteen judges. The first judges shall be those holding office in the several courts of common pleas when this constitution becomes effective. The judge longest in continuous service shall be president judge.

NOTE.

Source: This is entirely new matter.

Philadelphia is the only county which does not now have a single court of common pleas. If section 5-B of this article, as proposed by the commission, is adopted, it is necessary to specially provide, in the constitution or in a schedule adopted with the constitution, for the consolidation of the existing courts of common pleas in Philadelphia.

We believe that in Philadelphia the demand for the consolidation of the existing courts of common pleas is very general. An amendment to the present constitution, effecting this consolidation has already been passed by one general assembly.

Special Note to the commission by the committee on style.

As previously adopted by the commission this section was included in section 6.

On the question,

Will the committee adopt the section as reported?

The CHAIRMAN. We have already provided in the constitution, if I may explain it as I understand it, for a court of common pleas in each county. You may have a separate court of common pleas, one court of common pleas in Allegheny County now, therefore, that is taken care of under the general section; now this section is to take care of the situation in Philadelphia.

On the question recurring,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE V, SECTION 6-C.

The committee of the whole proceeded to the consideration of section 6-C as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

COURTS OF OYER AND TERMINER AND OF QUARTER SESSIONS OF THE PEACE.

Section 6-C. In each county there shall be a court of oyer and terminer and general jail delivery and a court of quarter sessions of the peace. The judges of the court of common pleas of the county shall be the judges of such courts.

NOTE.

Source: Part of article V, section 9:

"Judges of the courts of common pleas learned in the law shall be judges of the courts of oyer and terminer, quarter sessions of the peace and general jail delivery, and of the orphans court. * * *."

Changes in Substance: None.

Clarifying Amendment: The present constitution creates courts of oyer and terminer and general jail delivery, and courts of quarter sessions of the peace, in article V, section 1, but fails to state in terms where those courts shall be situated. This omission is corrected by stating that there shall be such courts in each county, thus following the long-established practice.

Changes in Style: The commission's rules of style have been followed.

Special Note to the commission by the committee on style.

This section contains the provisions of the last paragraph of section 4 as adopted by the commission.

On the question,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE V, SECTION 6-D.

The committee of the whole proceeded to the consideration of section 6-D as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

ORPHANS' COURTS.

Section 6-D. In each county there shall be an orphans' court.

In a county having more than one hundred and fifty thousand inhabitants there may be a separate orphans' court, with the jurisdiction of orphans' courts when this constitution becomes effective and with other jurisdiction as prescribed by law. Such court shall consist of one or more judges learned in the law, chosen by the electors of the county. They shall hold office for ten years. The judge longest in continuous service shall be president judge.

In a county with a separate orphans' court the register of wills of the county shall be the clerk thereof. He shall appoint assistant clerks only with the approval of the court. Accounts filed with him as register or as clerk shall be audited by the court without expense to the parties, unless the court shall appoint an auditor nominated by all parties in interest.

In a county without a separate orphans' court, the judges of the court of common pleas shall be the judges of the orphans' court, but only until the establishment of a separate orphans' court.

NOTE.

Source: (1) Article V, section 22:

"In every county wherein the population shall exceed one hundred and fifty thousand, the general assembly shall, and in any other county may, establish

a separate orphans' court, to consist of one or more judges who shall be learned in the law, which court shall exercise all the jurisdiction and powers now vested in or which may hereafter be conferred upon the orphans' courts, and thereupon the jurisdiction of the judges of the court of common pleas within such county, in orphans' court proceedings shall cease and determine. in any county in which a separate orphans' court shall be established, the register of wills shall be clerk of such court, and subject to its directions, in all matters pertaining to his office; he may appoint assistant clerks, but only with the consent and approval of said court. All accounts filed with his as register or as clerk of the said separate orphans' court shall be audited by the court without expense to parties, except where all parties in interest in a pending proceeding shall nominate an auditor whom the court may, in its discretion, appoint. In every county orphans' courts shall possess all the powers and jurisdiction of a registers' court, and separate registers' courts are hereby abolished."

(2) Part of article V, section 15:

"All judges required to be learned in the law, except the judges of the supreme court, shall be elected by the qualified electors of the respective districts over which they are to preside, and shall hold their offices for the period of ten years, if they shall so long behave themselves well * * *."

(3) Part of article V, section 9:

"Judges of the courts of common pleas learned in the law shall be judges * * * of the orphans' court * * *."

Changes in Substance: (1) The present constitution requires a separate orphans' court in a county having a population of over 150,000 and permits a separate orphans' court in any county. In the proposed new section, a separate orphans' court is permitted only in a county with over 150,000 inhabitants. The commission believe that such a court will never be necessary in a smaller county.

(2) The last sentence of article V, section 22, of the present constitution is omitted as unnecessary in view of existing legislation.

Clarifying Amendments: (1) The principle that there should be an orphans' court in each county is to be inferred from the present constitution and is expressly stated in the proposed new section.

(2) It is assumed that in the present constitution, the words "and subject to its directions in all matters pertaining to his office," refer to the office of clerk of the orphans' court, and they have therefore been omitted as surplusage.

Changes in Style: (1) The words "if they shall so long behave themselves well," in article V, section 15, are omitted because included in article XII, section 3-G, as proposed. (See note to article V, section 5-B.)

(2) By omitting article V, section 26, of the present constitution, we make it clear that this section vests in the orphans' court certain jurisdiction, but does not make the jurisdiction vested exclusive. (See note to article V, section 5-C.)

(3) The power to appoint an auditor, implied in the words "whom the court may, in its discretion appoint," is not expressly granted because already included in the general grant of jurisdiction as existing.

Special Note to the commission by the committee on style.

As previously adopted by the commission, this section was included in sections 4 and 22.

On the question,

Will the committee adopt the section as reported?

The CHAIRMAN. This is an important section and an explanation of it will be found in the notes following the section. The Secretary informs me that this section has been very carefully examined by a judge of the orphans' court of Philadelphia, and also by Mr. Alter, who is not here to-day, but who was a member of the commission that drafted the decedents' and orphans' court code.

And the question recurring,

Will the committee agree to the section as reported?

It was agreed to .

ARTICLE V, SECTION 8.

The committee of the whole proceeded to the consideration of section 8 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

SECTION 8. CRIMINAL COURTS IN PHILADELPHIA AND ALLEGHENY COUNTIES.

NOTE.

Omitted. In the present constitution this section reads:

"The said courts in the counties of Philadelphia and Allegheny, respectively, shall, from time to time, in turn, detail one or more of their judges to hold the courts of oyer and terminer and the courts of quarter sessions of the peace of said counties, in such manner as may be directed by law."

This section was inserted in the constitution of 1874 because of the several numbered courts of common pleas in the counties of Philadelphia and of Allegheny. These numbered courts have been abolished in Allegheny and are now recommended to be abolished in Philadelphia; hence the section is no longer needed.

On the question,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE V, SECTION 11.

The committee of the whole proceeded to the consideration of section 11, as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

JUSTICES OF THE PEACE NOT IN PHILADELPHIA.

Section 11. Each county, except the county of Philadelphia, shall be divided by its court of common pleas into justice of the peace districts. A borough, township or city with a population of fifty thousand or less shall not be divided. A district may be composed of two or more townships or boroughs or any borough or township may be attached to a district comprising all or a portion of a city. In a city with a population of more than fifty thousand, the number of inhabitants shall be divided by fifty thousand and the number of districts to which the city shall be entitled shall be the quotient. Population shall be determined by the latest United States decennial census. After each decennial census the court of common pleas may create new districts and may change the boundaries of districts. After any such revision of the districts, no new district shall be created and no change of boundary shall be made prior to the next decennial census.

In each district one justice of the peace shall be chosen by the electors at a municipal election. He shall have been a resident of his district for two years next preceding the election unless absent on the public business of the United States, of the state government or of a municipality of the commonwealth. He shall hold office for six years from the first Monday after his election and shall reside in his district during his term of office. Upon petition of at least five hundred electors of the district setting forth a reasonable cause for his removal, he shall be removed from office by the court of common pleas if the court, after hearing, finds such cause to exist. A vacancy in the office of justice of the peace shall be filled by the governor.

For services rendered in judicial proceedings a justice of the peace shall receive a salary prescribed by law and paid by the county, and no other compensation. Fees received for such services shall be paid into the county treasury for the use of the county.

Until otherwise prescribed by law, justices of the peace in any county shall have the jurisdiction and powers of the justices of the peace of the county existing when this constitution becomes effective.

Justices of the peace in office when this constitution becomes effective shall serve their unexpired terms. On the expiration of such terms, the office of justice of the peace as theretofore existing is abolished. Vacancies occurring prior to the expiration of such terms shall not be filled.

NOTE.

Source: Article V, section 11:

"Except as otherwise provided in this constitution, justices of the peace or aldermen shall be elected in the several wards, districts, boroughs and townships, by the qualified electors thereof, at the municipal election, in

such manner as shall be directed by law, and shall be commissioned by the governor for a term of six years. No township, ward, district or borough shall elect more than two justices of the peace or aldermen without the consent of a majority of the qualified electors within such township, ward or borough; no person shall be elected to such office unless he shall have resided within the township, borough, ward or district for one year next preceding his election. In cities containing over fifty thousand inhabitants, not more than one alderman shall be elected in each ward or district."

Changes in Substance: (1) Instead of electing justices of the peace according to wards, boroughs or townships, they will be elected according to districts formed by the court of common pleas of the county in the manner indicated.

(2) There can be but one justice of the peace in a district, instead of two or more as under the present constitution.

(3) Two years' residence in the district immediately preceding his election is required, instead of one year. Absence on public business is not to be reckoned as a loss of residence.

(4) The provisions for removal by the court of common pleas and for the filling of vacancies by the governor are new.

(5) The provisions in regard to salary and fees are new.

Changes in Style: The substance of the provisions in regard to the time of elections has been transferred to article XII, section 3-A, as proposed.

Special Note to the commission by the committee on style.

We have changed the language of the paragraph on removal so as to make it clear that the court removes the offending justice of the peace. This we believe to be the commission's intention.

We have made it clear that the court does not have the power to revise the districts more than once every ten years. This, we understand, was the intent of the commission.

The final paragraph contains matter which could properly be inserted in a schedule by a constitutional convention.

Recommendation for Change in Substance.

Strike out, in line 26; [Fees, received for such services]; and insert; "Fees, fines and penalties received by a justice of the peace."

This will make this section conform in this matter to section 12, dealing with justices of the peace in Philadelphia.

On the question,

Will the committee adopt the section as reported?

Mr. REED. Mr. Chairman: Somebody raised the question whether justice of the peace in cities should be learned in the law as well as in Philadelphia. I do not remember who it was. Was it you, Doctor Thorpe?

Mr. THORPE. Yes, it was.

Mr. REED. Excuse me for taking your thunder. That is Doctor Thorpe's special provision, and I will let him talk about it. What I wanted to ask you was whether on the nineteenth line of the section, "Upon petition of at least five hundred electors of the district setting forth a reasonable cause for his removal," whether that is not too large a number. The court has to review the application and it seems to me one hundred or at most two hundred signers would be enough.

The CHAIRMAN. Would you amend it in that respect?

Mr. REED. Mr. Chairman: I move to amend it to read "two hundred."

Mr. GORDON. Mr. Chairman: I second the amendment.

The amendment was agreed to.

Mr. FOX. Referring to that same paragraph providing that the court of common pleas may remove the justices of the peace, ought there not be a provision for appeal? It may be that the common pleas judges might make some mistakes of law.

The CHAIRMAN. I think that would be a proper amendment. Will you suggest the language, Judge Fox?

Mr. FOX. Mr. Chairman: Not just at the moment. I do not know what would be the proper language. Of course, I think he should appeal either to the superior or the supreme court. Insert there "with the right to appeal to the superior court," and I make that motion to amend.

Mr. REED. Mr. Chairman: I second the amendment.

The amendment was agreed to.

The CHAIRMAN. Then the next matter to consider is the recommendation of the committee to amend by striking out on line twenty-six, "Fees received for such services" and inserting the words, "Fees, fines and penalties received by a justice of the peace."

On the question,

Will the committee agree to the amendment?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE V. SECTION 12.

The committee of the whole proceeded to the consideration of section 12 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

JUSTICES OF THE PEACE IN PHILADELPHIA.

1 Section 12. The county of Philadelphia shall be divided by its court of
2 common pleas into eighteen justice of the peace districts as nearly equal in
3 population as possible. After each United States decennial census, the court
4 of common pleas may create new districts and may alter the boundaries of dis-
5 tricts. After any such revision of the districts, no new district shall be created
6 and no change of boundary shall be made prior to the next decennial census.
7 The number of districts shall not exceed one for each one hundred thousand of
8 population.
9 In each district of one justice of the peace learned in the law shall be chosen
10 by the electors of the district at a municipal election. His qualifications, term,
11 the requirements as to his residence, and the method of his removal and of filling
12 a vacancy in his office shall be as in the case of justices of the peace in other
13 counties. For services rendered in judicial proceedings, he shall receive a salary
14 prescribed by law and paid by the county and no other compensation. Fees,
15 fines and penalties received by a justice of the peace shall be paid into the
16 county treasury for the use of the county.
17 A justice of the peace shall hold a court not of record. His jurisdiction in
18 civil matters shall be limited to matters involving three hundred dollars or less
19 and except as otherwise provided in this section shall be similar to that of
20 justices of the peace in other counties. No political duties shall be imposed
21 on him.
22 Rules of procedure for the district peace courts not inconsistent with law or
23 with the regulations of the supreme court shall be prescribed by the court of
24 common pleas of Philadelphia county.
25 Magistrates in office when this constitution becomes effective shall serve their
26 unexpired terms. On the expiration of such terms, the office of magistrate as
27 theretofore existing is abolished. Vacancies occurring prior to the expiration of
28 such terms shall not be filled.
29 The provisions of this section may be changed or abolished by law.

NOTE.

Source: (1) Article V, section 12:

"In Philadelphia there shall be established, for each thirty thousand inhabitants, one court, not of record, of police and civil causes, with jurisdiction not exceeding one hundred dollars; such courts shall be held by magistrates whose term of office shall be six years and they shall be elected on general ticket at the municipal election, by the qualified voters at large; and in the election of the said magistrates no voter shall vote for more than two-thirds of the number of persons to be elected when more than one are to be chosen;

they shall be compensated only by fixed salaries to be paid by said county; and shall exercise such jurisdiction, civil and criminal, except as herein provided, as is now exercised by aldermen, subject to such changes, not involving an increase of civil jurisdiction or conferring political duties, as may be made by law. In Philadelphia the office of aldermen is abolished." (Amendment of November 2, 1909.)

(2) Article V, section 13:

"All fees, fines and penalties in said courts shall be paid into the county treasury."

Changes in Substance: (1) Justices of the peace learned in the law are substituted for magistrates.

(2) One justice of the peace is to be elected in each of the districts formed by the court of common pleas.

(3) There is to be one justice of the peace for each one hundred thousand of population instead of a magistrate for each thirty thousand.

(4) The jurisdiction of each justice of the peace is to be similar to that of justices of the peace throughout the state, except that in civil cases it is limited to three hundred dollars. The assimilation to the situation in other counties is new.

(5) Qualifications for office, except the requirement that the incumbent shall be learned in the law, and provisions for removal and for filling vacancies are the same as in the case of justices of the peace in other counties. This is new.

(6) The court of common pleas is directed to prescribe procedure. This is new.

(7) The final paragraph permits the above system to be abolished or changed by law.

Changes in Style: The section has been entirely rewritten and the commission's rules of style have been followed.

Special Note to the commission by the committee on style.

In re-drafting this section your committee has eliminated all references to the term, "district peace court." The commission, at its session on May 11, changed the designation "district peace judge" to "justices of the peace." In view of this change, the committee has made the language of this section conform to the language of section 11, relating to justices of the peace not in Philadelphia.

As adopted by the commission, the justice of the peace districts were to be composed of "compact and contiguous territory." The committee has omitted this expression as they have not been able to attach any clear meaning to it.

On the question,

Will the committee adopt the section as reported?

Mr. FOX. Mr. Chairman: I move to amend by inserting in line ten after the word "His" the word "other," so that it will read, "His other qualifications, term, the requirements," and so forth.

Mr. REED. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE V, SECTION 16-A.

The committee of the whole proceeded to the consideration of section 16-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

JUDGESHIPS TO BE NUMBERED.

1 Section 16-A. In each court with more than one judge the judgeships shall
2 be numbered by the secretary of the commonwealth. Each elector shall vote
3 separately for the candidates for the several judgeships. No person shall be a
4 candidate for more than one judgeship in the same court.

NOTE.

Source: This is entirely new matter. The purpose is to give to the sitting judge in large counties a greater advantage than he now has in election contests. If, for instance, the courts of common pleas of Philadelphia county are consolidated, and if four of the fifteen judges come up at one time for re-election, it will be more difficult to defeat a sitting judge contending against a limited number of other candidates than it would be if all candidates, perhaps a dozen or more, were contending together for four places. The natural tendency of the voter is to favor the sitting judge and this he will be more likely to do if the contest is plainly between that judge and aspirants for his particular office.

The commission believe that a policy which tends to continue judges in office will promote the proper administration of justice.

Special Note to the commission by the committee on style.

We have omitted the statement appearing, in this section as originally drafted that "for the purpose of election or appointment" each judgeship shall be "deemed a separate office," in order to avoid the possibility of the kind of controversy and scandal which might arise under the following circumstances: There are fifteen judges of the court of common pleas of Philadelphia county. During the session of the senate, A is appointed to the vacancy in No. 4 and B to the vacancy in No. 14. The senate rejects both nominations and adjourns. The governor appoints B to No. 4 and A to No. 14. This, it is submitted, he would not, as the section is now worded, be able to do as the offices have not been made separate offices for any purpose; it has simply been provided that each elector shall vote separately for judges, when two or more are to be elected at the same election for the same court, in the same manner as if he were voting for persons to hold distinct offices.

The duty of numbering the judges has been imposed upon the secretary of the commonwealth, who would, in any event, have to keep a record of their numbers. This is a provision less cumbersome than the provision for numbers according to seniority of commission.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE V, SECTION 16-B.

The committee of the whole proceeded to the consideration of section 16-B as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

DETERMINING PRIORITY.

Section 16-B. Before two or more judges of the same court begin service on the same day, they shall cast lots to determine who shall be deemed first to have begun service and shall certify the result to the governor.

NOTE.

Source: Article V, section 17:

"Should any two or more judges of the supreme court, or any two or more judges of the court of common pleas for the same district, be elected at the same time, they shall, as soon after the election as convenient, cast lots for priority of commission, and certify the result to the governor, who shall issue their commissions in accordance therewith."

Changes in Substance: The provisions are extended to cover all courts, because the question of priority may arise in any of them.

Under the present constitution the lots have to be cast when two judges are elected on the same day, although one of them is and the other is not already a member of the court. Under the wording proposed, the lots would have to be cast only when both judges begin their service on the same day.

Changes in Style: The commission's rules of style have been followed.

Special Note to the commission by the committee on style.

We have included all courts provided for in this constitution because we believe that it was not the commission's intention to limit the provisions of this section to the three courts mentioned in the section as adopted by the commission; namely, the supreme, superior and common pleas courts, omitting the orphans' courts.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE V, SECTION 16-C.

The committee of the whole proceeded to the consideration of section 16-C as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

RESIDENCE OF JUDGES.

1 Section 16-C. A judge or justice of the peace shall reside within the terri-
2 tory over which he has jurisdiction, or within the district from which he has
3 been elected.

NOTE.

Source: Article V, section 19:

"The judges of the supreme court, during their continuance in office, shall reside within this commonwealth; and the other judges, during their continuance in office, shall reside within the districts for which they shall be respectively elected."

Changes in Substance: A justice of the peace is required to reside within the territory over which he has jurisdiction.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

Mr. GORDON. Mr. Chairman: May I ask you regarding this section, "and each justice of the peace shall reside within the territory over which he has jurisdiction or within the district in which he has been elected." What does that mean? Why not stop at the end of the word jurisdiction?

The CHAIRMAN. It meant to cover the supreme court. It meant to cover all the judges of the supreme court.

Mr. GORDON. It does, if you stop at the end of jurisdiction, but I do not know what the language "or within the district from which he has been elected," means.

The CHAIRMAN. It seems to me that you are correct in that.

Mr. GORDON. The latter part certainly, "from which he has been elected."

Mr. REED. Well, if he sits within the territorial jurisdiction, that is all that is necessary.

Mr. GORDON. I think that is all that is necessary. Mr. Chairman: I move the words, "or within the district from which he has been elected" be stricken out.

Mr. REED. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the committee adopt the section as amended?

Mr. FOX. Mr. Chairman: If I might call your attention to what was adopted by the commission originally, it seems to me that is still better because it refers to the judges of the superior court. I read from section 19 of article V of the draft as adopted by the commission, "The justices of the supreme court and the judges of the superior court during their continuance in office shall reside

within this commonwealth, and the other judges during their continuance in office shall reside within the district from which they shall be respectively elected." I would move to amend by substituting the section as originally adopted by the commission with the words "other judges and justices of the peace." It seems to me that would cover satisfactorily the entire situation.

Mr. CUYLER. Mr. Chairman: I second the substitute.

On the question,

Will the committee agree to the substitute?

Mr. REED. Mr. Chairman: Then you use the same expression, "districts from which they are elected." That is what Judge Gordon criticized.

Mr. GORDON. That is what the constitution of 1874 said, "for which."

On the question recurring,

Will the committee agree to the substitute?

It was agreed to.

ARTICLE V, SECTION 18.

The committee of the whole proceeded to the consideration of section 18 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

COMPENSATION OF JUDGES AND OF JUSTICES OF THE PEACE.

1 Section 18. A judge or a justice of the peace required to be learned in the
2 law shall receive for his services a salary prescribed by law, and no other com-
3 pensation. A judge required to be learned in the law shall be paid by the state
4 government.

NOTE.

Source: Article V, section 18:

"The judges of the supreme court and the judges of the several courts of common pleas, and all other judges required to be learned in the law, shall at stated times receive for their services an adequate compensation, which shall be fixed by law, and paid by the state. They shall receive no other compensation, fees, or perquisites of office for their services from any source, nor hold any other office of profit under the United States, this state or any other state."

Changes in Substance: None.

Changes in Style: The prohibition against holding other offices is transferred to article XII, section 3-B.

Special Note to the commission by the committee on style.

The commission will note that we have omitted the statement that the salary of a judge cannot be diminished but may be increased. This is because it is a duplication of the provisions of article XII, section 3-E.

On the question,

Will the committee adopt the section as reported?

Mrs. MILLER. Mr. Chairman: In the article of the justices of the peace in the other counties outside of Philadelphia, you do not say that they shall be learned in the law. This would take them out of the salaried class and put them back on the fee system.

The CHAIRMAN. I think that is provided for in the section which is on the justices of the peace outside of Philadelphia. It provides that they shall be paid by salary.

Mrs. MILLER. I mean that this would be in contradiction then.

The CHAIRMAN. I think that suggestion is timely. There is a difference, the Secretary calls my attention to it, with respect to

justices of the peace in the country. We provide that he shall be paid a salary for the services that he renders in the discharge of his official duties. In the country it is an essential thing in the matter of taking affidavits, and so on, that justices of the peace shall move around in their district to accommodate the people, and for that service they would be paid, but they would be paid a salary for all judicial duties that they perform and they would be paid extra the compensation allowed by law for taking affidavits and acknowledgments and verifying pension papers and all that sort of thing. That is a very large part of their duty in the country, and they move around in their districts to do that.

On the question recurring,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE V, SECTION 21.

The committee of the whole proceeded to the consideration of section 21 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

DUTIES OF COURTS TO BE JUDICIAL ONLY.

Section 21. No duties shall be imposed on a court or judge except such as relate to the administration of justice, to the conduct of the business of the court, or to the conduct of elections. After the adjournment of the first session of the general assembly following the time when this constitution becomes effective, no powers of appointment shall be exercised by a court or judge except such as relate to their duties or to the inspection and management of prisons, the visitation of public institutions, the condemnation of private property, and the administration of public trusts, of public parks or of public works. Other powers of appointment vested in a court or judge shall be abolished or vested elsewhere by law.

NOTE.

Source: (1) Article V, section 21:

"No duties shall be imposed by law upon the supreme court or any of the judges thereof, except such as are judicial, nor shall any of the judges thereof exercise any power of appointment except as herein provided. The court of nisi prius is hereby abolished, and no court of original jurisdiction to be presided over by any one or more of the judges of the supreme court shall be established."

Changes in Substance: (1) The prohibition against imposing non-judicial duties upon the judges of the supreme court is extended to all judges and also to justices of the peace in Philadelphia. Instead of using the ambiguous words of the present constitution "no duties * * * except such as are judicial" and "not conferring political duties," the proposed section enumerates the duties which may be imposed. This will avoid doubt. Certain powers of appointment are expressly permitted to be exercised by the courts in cases in which the commission believe that this method of appointment will serve the public interests. Other powers of appointment, as, for instance, the appointment of boards of revision of taxes and of boards of education, are to be abolished or vested elsewhere by law.

(2) The last sentence of article V, section 12, of the present constitution is omitted as obsolete in so far as it concerns the courts of nisi prius, and as unnecessary and unwise in so far as it concerns other courts of original jurisdiction.

Changes in Style: The section has been entirely rewritten, following the commission's rules of style.

On the question,
Will the committee adopt the section as reported?

Mr. THORPE. Mr. Chairman: Mr. Alter would have suggested this amendment, I think, if he would have been here. We had some

conversation with the president judge of Allegheny county and others to insert in line eight, or such other place as the Commission may deem advisable, the expression, "the management of public law libraries." That ought to be inserted in this amendment.

Mr. REED. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the committee adopt the section as amended?

Mr. CUYLER. Mr. Chairman: I want to make an inquiry about the last part of that section. The last clause provides, "other powers of appointment vested in the court or judge shall be abolished or vested elsewhere by law. The question comes up in connection with a savings bank in Philadelphia founded one hundred years ago, which originally provided in its charter for the first board of managers, and also provided in the charter that vacancies in the board of managers should be filled from their own members. Subsequently they voluntarily had an amendment passed vesting that power in the district court, and subsequently it was vested in the court of common pleas upon the abolition of the district court. The board of managers nominated three of their number and then sent those three names to the president judges of the court of common pleas, which elected one of those three indicated. Now, for some time it has been thought wise that that should be amended, and the managers were about to proceed after consultation with the present judges of the court of common pleas of Philadelphia county for an amendment reverting to the original provision. The courts has changed so much, the judges have increased considerably, and it was deemed wiser that the original power should be vested in them. Now, if this section passed and the constitution be adopted with this provision, and the court could no longer make this appointment, what becomes of the powers of the managers? Would it revert back to the provisions of the original charter, or would it be subject to legislation? If this is subject to legislation, it seems to me a grave question arises as to how the legislature should feel respecting institutions like that. This particular banking institution has assets of over two hundred million dollars, and we should very much depricate that the power of the election of its managers should be delegated to the legislature. He would think that under this section as provided now in the constitution it would be referred to its original provision in the charter. It seems to me some clause ought to be provided to take care of that. I do not think there is any other institution in the state that is exactly in the same position. Possibly there is one in Allegheny county, the Western Savings Institution, but I do not know whether there is or not.

The CHAIRMAN. That institution is almost a public institution.

Mr. CUYLER. It is not a public institution as to the appointment of managers and that sort of thing. They are all provided for in the original charter. While it is a public institution in a sense, in the sense that it is not an institution for private profit, at the same time it receives deposits, and should be safeguarded from any political and legislative interference.

The CHAIRMAN. If we insert after the words "administration of public trust" the words "appointment of managers of savings institutions—

Mr. CUYLER. I do not quite catch that, sir.

The CHAIRMAN. If we insert after the words "administration of public trust" the words "the appointment of managers of savings institutions," would that cover it

Mr. CUYLER. We want also to get away from the appointment by the present judges. We want to revert to the original provisions of the charter, where the board selects their own successors.

The CHAIRMAN. They would have to do that by legislation, Mr. Cuyler.

Mr. CUYLER. I suppose they would, but the thought in my mind was if they had to do that by legislation, what happens in the meanwhile if this power of appointment is taken away from the judges? There is a hiatus there. Suppose the legislature does not meet for a year or more, if this power is taken away from the courts, what happens?

The CHAIRMAN. I think a condition like that will be taken care of as it was taken care of in the constitution of 1874. I think that could be taken care of in the schedule of the constitution which would provide that everything should be carried foward until such time as the legislature acted.

Mr. CUYLER. My own feeling would be as a lawyer, as a matter of law, that in all probability it would revert to the original charter, that the power would come back to them that way. But I do not want to take any risk so far as the schedule is concerned. I think that could take care of it. The only reason I asked the question is if there is any doubt that this power would not revert we would perhaps at once take up with the present judges the question of voluntarily giving up these powers and revert to the original provisions of the charter.

The CHAIRMAN. It might be taken care of in the schedule, I am sure.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE V, SECTION 21-A.

The committee of the whole proceeded to the consideration of section 21-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

POWER TO CHANGE VENUE.

1 Section 21-A. The power to change the venue shall be vested in the courts
2 and exercised as prescribed by law.

NOTE.

Source: Article III, section 23:

"The power to change the venue in civil and criminal cases shall be vested in the courts, to be exercised in such manner as shall be provided by law."

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE V, SECTION 21-B.

The committee of the whole proceeded to the consideration of section 21-B as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

APPEALS TO COURTS IN HOMICIDE CASES.

1 Section 21-B. A person sentenced for felonious homicide may remove the
2 indictment, record and all proceedings to the supreme court for review.

NOTE.

Source: Article V, section 24:

"In all cases of felonious homicide, and in such other criminal cases as may be provided for by law, the accused, after conviction and sentence, may remove the indictment, record and all proceedings to the supreme court for review."

Changes in Substance: None.

Changes in Style: The reference to "such other criminal cases as may be provided by law" has been omitted as superfluous, and the language has been changed in accordance with the commission's rules of style.

On the question,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE V, SECTION 21-C.

The committee of the whole proceeded to the consideration of section 21-C as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

APPEALS FROM COURTS NOT OF RECORD.

1 Section 21-C. A person summarily convicted, or a party to a suit for a
2 penalty before a justice of the peace or in a court not of record, may appeal
3 to a court of record in the manner prescribed by law.

NOTE.

Source: Article V, section 14:

"In all cases of summary conviction in this commonwealth, or of judgment in suit for a penalty before a magistrate, or court not of record, either party may appeal to such court of record as may be prescribed by law, upon allowance of the appellate court or judge thereof upon cause shown."

Changes in Substance: The concluding words "upon allowance of the appellate court or judge thereof upon cause shown." have been omitted because the commission believe that an appeal should be a matter of right in the two specified cases without requiring a special allocation from a judge.

Changes in Style: The commission's rules of style have been followed.

On the question,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE V, SECTION 23.

The committee of the whole proceeded to the consideration of section 23 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

PROCESS AND INDICTMENTS.

1 Section 23. The style of process shall be "The Commonwealth of Pennsyl-
2 vania." Prosecutions shall be carried on in the name and by the authority of
3 the commonwealth of Pennsylvania. Indictments shall conclude "against the
4 peace and dignity of the commonwealth of Pennsylvania."

NOTE.

Source: Article V, section 23:

"The style of all process shall be 'The Commonwealth of Pennsylvania.' All prosecutions shall be carried on in the name and by the authority of the commonwealth of Pennsylvania, and conclude 'against the peace and dignity of the same.'"

Changes in Substance: None.

Changes in Style: "The present constitution provides that "prosecutions shall * * * conclude 'against the peace and dignity of the same.'" These words are copied from the constitutions in 1838 and of 1790. Obviously they are meaningless. What is really intended is that indictments shall so conclude. This is made clear by section the twenty-seventh of the second article of the constitution of 1776 which provides: "Section the twenty-seventh. All prosecutions shall commence in the name and by the authority of the freemen of the commonwealth of Pennsylvania; and all indictments shall conclude with these words, 'Against the peace and dignity of the same.' The style of all process hereafter in this state shall be, the commonwealth of Pennsylvania."

The commission recommend the use of the concluding words, "against the peace and dignity of the commonwealth of Pennsylvania," to conform with the actual practice. The form proposed was sustained by the supreme court in Rogers v. Commonwealth, 5 S. & R. 463 (1820).

On the question,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE V, SECTION 27.

The committee of the whole proceeded to the consideration of section 27 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

TRIAL WITHOUT A JURY.

1 Section 27. If the parties to a civil case shall agree to dispense with a trial
2 by jury, the court shall hear the case and shall deliver a judgment having the
3 same effect as if there had been such trial by jury.

NOTE.

Source: Article V, section 27:

"The parties, by agreement filed, may in any civil case dispense with trial by jury, and submit the decision of such case to the court having jurisdiction thereof, and such court shall hear and determine the same; and the judgment thereon shall be subject to writ of error as in other cases."

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

On the question,
Will the Committee adopt the section as reported?
It was adopted.

ARTICLE V, SECTION 27-A.

The committee of the whole proceeded to the consideration of section 27-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

SECTION 27-A. EMPLOYMENT OF COUNSEL FOR POOR PERSONS.

Special Note to the commission by the committee on style.

As adopted by the commission, this section read:

"The general assembly shall provide by law, applicable to all courts of record and such other courts as it may deem proper, for the employment of counsel who shall be paid by the county under an order of court, and also for relief from the payment of the costs of litigation in the case of any litigant in said courts who shall be unable without great hardship to employ such counsel and pay such costs, or either; and the general assembly may also provide that the costs of litigation may be classified or graded according to the amount in controversy."

Your committee have omitted this section because it conflicts with the provisions of article V, section 3-G.

On the question,

Will the committee adopt the report of the committee on style to omit this section?

The CHAIRMAN. The recommendation of the committee on style to the commission is that this section, which was adopted by the commission, should be omitted for the reason that it is covered by the provisions already in section 3-G of article V.

Mr. REED. If I had the doing of it I would put that section in and submit it to the supreme court, because you provide that the supreme court shall have the right to appoint council, rather require counsel to defend or try cases for the poor, and made no provision for their compensation. If counsel did enough of that they would figure in the catagory of poor persons themselves. In this section the general assembly was authorized to pass laws which, among other things, would provide money for the payment of counsel. The supreme court I do not think would have that power.

Mr. FOX. I was doubtful about the wisdom of the provision we adopted, section 3-G of article V. I think that it is very much better if any appointments of that kind are to be made that they should be made by the local courts which are much better advised as to who can properly represent people who cannot afford to pay, and it seems to me this must impose an undue burden on the supreme court. I agree with Judge Reed that it would be very much better to adopt this provision and omit the other provision. I therefore move the adoption of this provision.

The CHAIRMAN. Well, then we will have to go back and strike out the other.

Mr. FOX. Mr. Chairman: I went over this at home and I marked it as being questionable, and I move to strike it out.

The CHAIRMAN. Then the question is on Judge Fox's motion that this section as it appears shall stand. Is there a second to that motion?

Mr. REED. Mr. Chairman: I second the motion.

The motion was agreed to.

The CHAIRMAN. That requires an amendment to section 3-G of article V.

RECONSIDERATION OF VOTE.

Mr. FOX. Mr. Chairman: I move that the vote by which section 3-G of article V was adopted as amended be reconsidered.

Mr. REED. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE V, SECTION 3-G.

The committee of the whole resumed the consideration of section 3-G as reported by the committee on style.

The secretary read the section as follows:

REGULATIVE POWER AND DUTY OF SUPREME COURT.

1 Section 3-G. The supreme court shall regulate procedure in courts of record
2 and shall adapt the processes of justice to the necessities of all litigants.
3 In the discharge of these duties it may regulate forms of action, pleading and
4 practice, proof, the keeping of judicial records, and the conditions under which
5 fees and costs may be remitted and counsel assigned without expense to litigants,
6 and may regulate the activities of any public or private agency rendering legal
7 aid.
8 Regulations, when promulgated by the chief justice, shall have the force of
9 law until modified by law and shall operate to repeal laws theretofore enacted
10 inconsistent with such regulations.
11 Subject to law and to such regulations, courts of record shall have the power
12 to make their own rules.

On the question recurring,

Will the committee adopt the section as reported?

Mr. FOX. Mr. Chairman: I move to strike out lines 4, 5, 6 and 7, beginning with line 4, "and the condition."

Mr. REED. Mr. Chairman: They are really inconsistent now. We have a general assembly providing a method in which counsel can be employed and paid, and then you have the supreme court prescribing general conditions. They do not appoint the counsel, they prescribe the conditions.

The CHAIRMAN. Might it not conflict, Judge Reed, between the regulations of the supreme court and some law prescribing some legislative regulation? I think the power ought to be lodged at one place.

Mr. REED. Mr. Chairman: Somebody will have to prescribe the conditions. The general assembly could provide for the payment. I do not care anything about it. Do you strike out "and may regulate the activities of any public or private agency rendering legal aid," too

The CHAIRMAN. Yes, the whole thing. The words beginning after "records" down to and including line 7.

Mr. REED. Mr. Chairman: I might as well go along. I will second it.

The motion was agreed to.

On the question,

Will the committee adopt the section as amended?

It was adopted.

ARTICLE VIII, SECTION 1.

The committee of the whole proceeded to the consideration of section 1 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

QUALIFICATIONS OF ELECTORS.

1 Section 1. A citizen of the commonwealth shall be entitled to vote at elections
2 who has:
3 1. Reached the age of twenty-one;
4 2. Been a citizen of the United States at least thirty days;
5 3. Resided in the state immediately preceding the election for one year, or,
6 if he is a native of the commonwealth or has been an elector, then
7 for six months immediately preceding the election;
8 4. Resided for sixty days next preceding the election in the election district
9 where he shall offer to vote;
10 5. Complied with the law regulating the registration of electors.

NOTE.

Source: Article VIII, section 1:

"Every male citizen of twenty-one years of age, possessing the following qualifications, shall be entitled to vote at all elections, subject, however, to such laws requiring and regulating the registration of electors as the general assembly may enact:

"1. He shall have been a citizen of the United States at least one month.

"2. He shall have resided in the state one year (or, having previously been a qualified elector or native born citizen of the state, he shall have removed therefrom and returned, then six months), immediately preceding the election.

"3. He shall have resided in the election district where he shall offer to vote at least two months immediately preceding the election.

"4. If twenty-two years of age and upwards, he shall have paid within two years a state or county tax, which shall have been assessed at least two months and paid at least one month before the election." (Amendment of November 5, 1901.)

Changes in Substance: (1) The right of suffrage is conferred on women.

(Though the pronoun "he" is retained throughout this proposed constitution, the masculine includes the feminine. See proposed concluding section; also article 1, section 5-A, supra.)

(2) The qualification that a tax shall have been paid is abolished.

The payment of a poll tax does not indicate that the payer has a property stake in the community; and even if it did, the Commission do not believe in a property qualification for the exercise of the right of suffrage.

Changes in Style: (1) Placing the qualifications of attainment of twenty-one years and of compliance with the registration laws with the other qualifications.

(2) Clause 2 has been reworded so as to avoid the necessity of using parenthesis. The words "removed therefrom and returned" have been omitted as conveying no meaning not already expressed.

Special Note to the commission by the committee on style.

Recommendation for Change in Substance.

Strike out clause 3, lines 5 to 7, and insert: *3. Resided in the state for six months immediately preceding the election.*

On the question,

Will the committee adopt the section as reported?

Mr. THORPE. May I make an inquiry? In the bill of rights "the right to hold office" has already been passed on. I raised the question whether that might not appropriately be brought in this article rather than remain in the bill of rights.

The CHAIRMAN. I believe I will entertain a motion to do that.

Mr. THORPE. I move that the substance of section 5-A of article I pertaining to the right to hold office be transferred to the article on suffrage and election, article VIII.

Mr. REED. I second that motion.

The motion was agreed to.

The CHAIRMAN. The next suggested amendment is to strike out clause 3, lines 5 to 7, and insert "3. resided in the state for six months immediately preceding the election."

On the question,

Will the committee agree to the amendment?

Mr. GORDON. May I ask the reason for that

The CHAIRMAN. It occurred to the committee on style that six months' residence in the state under the conditions as they now exist, personal registration laws in the city are sufficient residence qualification. That was the only reason. Now, in certain instances, it is a year and in other instances it is six months.

On the question recurring,

Will the committee agree to the amendment?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

Mr. GORDON. May I inquire if the committee that recommended this can inform us as to what the provision in most of the states is as to state residence as a condition of the right to vote? The purpose of it is quite clear. It is intended to prevent colonization, and that only, from one state to another.

The CHAIRMAN. Yes, sir.

Mr. GORDON. In some of the states they exact a longer term than six months. I do not think we should reduce ours especially when it was a year heretofore.

The CHAIRMAN. I think we have an index to show that. We will look at that, and if that is so we will entertain a motion to change it later.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE VIII, SECTION 1-B.

The committee of the whole proceeded to the consideration of section 1-B as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

RESIDENCE OF ELECTORS.

1 Section 1-B. For the purpose of voting no person shall be deemed to have
2 gained a residence by reason of his presence or to have lost it by reason of his
3 absence while in the service of the United States, of the state government or of
4 a municipality of the commonwealth, or while nagivating the waters of the
5 United States, or the high seas, or while a student of an institution of learning,
6 or while kept in an institution at public expense, or while confined in prison.

NOTE.

Source: Article VIII, section 13:

"For the purpose of voting no person shall be deemed to have gained a residence by reason of his presence, or lost it by reason of his absence, while employed in the service, either civil or military, of this state or of the United States, nor while engaged in the navigation of the waters of the state or of the United States, or on the high seas, nor while a student of an institution of learning, nor while kept in any poorhouse or other asylum at public expense, nor while confined in public prison."

Changes in Substance: None.

Clarifying Amendment: In the present constitution it is not clear whether a person absent on the business of a municipality is absent on the business of "this state." The section as suggested provides that a person so absent would not gain or lose a residence.

Changes in Style: The words "waters of the state" are omitted. John F. Lewis, Esq., of the Philadelphia bar, a recognized authority on admiralty law, in response to a request for an opinion on the question whether there are navigable waters of the state as distinguished from navigable waters of the United States, has written the following letter to the Commission:

"The words, 'of the state' in the clause, 'engaged in the navigation of the waters of the state or of the United States' of section 13, article 8, of the present constitution of Pennsylvania, are evidently a relic from the time when the jurisdiction of the admiralty courts was limited to tidal waters. The Genessee Chief, 12 Howard, 463, which was followed by The Eagle, 8 Wallace, 15, repudiated the tidal test of jurisdiction, and held that the true criterion was whether the water was navigable. Hence, every navigable water of Pennsylvania is subject to the jurisdiction of the United States admiralty, and can be truthfully said to be a 'water of the United States.'

"It was reasonable that under the old limits the constitution should provide that for the purpose of voting, no person should be deemed to have lost his residence by reason of his absence while engaged in navigation, because the reason which was contemplated was a long voyage, but while the jurisdiction of the nited States courts in admiralty does not extend over an inland lake entirely within the body of a state and in no way connected with the possibility of navigation outside the state, yet there are no such waters in Pennsylvania, and hence there is no present reason for retaining the words 'of the state.'

"I think the words 'of the state' could be safely omitted by the commission."

On the question,

Will the committee adopt the section as reported?

Mr. REED. It don't make any difference under the section. Just for the sake of showing we have lawyers who sometimes slip up like others there is a little strip some three miles long, Conneaut Lake, which the supreme court has decided is navigable, and therefore it is under the authority of the admiralty is a little mistake. That does not effect the provision at all.

Mr. GORDON. I would like to inquire whether there is any change in this section from the existing constitution or from the clause as adopted by the commission. I could not read the notation of the committee while we were waiting.

The CHAIRMAN. We will wait while you do read it.

On the question recurring,

Will the committee agree to the section?

It was agreed to.

ARTICLE VIII, SECTION 1.

DISQUALIFICATION OF ELECTORS.

Mr. THORPE. Might I be permitted to call up once more this question of the six months' residence or a year's residence, while we are here on this subject?

The CHAIRMAN. Yes, sir.

Mr. THORPE. I am not certain that it is wise to change this from a year to six months. The practice in the country seems to be in the eastern states, the older states, to make the residence longer, the western states to make the residence shorter for obvious reasons, because our friends who arrive from abroad on the first trip residence for foreign-born is very brief. I do not want to pose as a high federalist, but it would seem that admission into the electorate on so brief a term of residence is of questionable value in the republic.

Mr. GORDON. A representative of the committee has handed me a volume from which it appears that in the following states one year's residence is required in the state to get the right of suffrage,

and those states are: Arkansas, Colorado, Kentucky, Delaware, Florida, Georgia, Illinois, Maryland, Montana, New Jersey, New Mexico, New York, North Dakota, Virginia, Oklahoma, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin and Wyoming. I do not see why we should reduce the requirement in this state to six months. There are only the following states in which six months' is required: Indiana, Ohio, Kansas, Michigan, Minnesota, Nebraska and Oregon.

The CHAIRMAN. If Judge Gordon will move to re-consider the vote by which we adopted that amendment, it can be changed.

RECONSIDERATION OF VOTE

Mr. GORDON. Mr. Chairman: I move, sir, to reconsider the vote by which six months was made the period of residence in the state as a qualification for voting and let the section remain as it stood, "one year."

Mr. CUYLER. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. VOLL. May I inquire, Mr. Chairman, if that part should be adopted a period of six months would include foreigners who come over here, as suggested by Dr. Thorpe? Is there not a specified time before a foreigner can get his naturalization papers?

Mr. GORDON. It would not affect that question at all.

Mr. THORPE. It is a question of residence and not a question of naturalization.

Mr. VOLL. Of course, it would follow that he would have to be a residence more than six months. My idea for voting for this was that there is a practice of changing citizenship that is moving from one city to another, particularly among workingmen, a bona fide resident of a city or municipality, a man who having been born in this country, and while it is true that a great majority, as Judge Gordon said, still retain the one year's provision, there is a serious question in my mind if we have not developed far enought to change that to six months.

The CHAIRMAN. I might explain that this six months' provision would still permit those who had been born in Pennsylvania, who lived in Pennsylvania, were natives of Pennsylvania, who moved out and then moved back to vote. They would only have to be here six months. The total stranger would have to be here a year

On the question recurring,

Will the committee agree to the motion to reconsider the vote by which this section was passed?

It was agreed to.

Mr. GORDON. Mr. Chairman: I move that clause 3 be amended so as to read "3. Resided in the state immediately preceding the election for one year."

Mr. THORPE. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE VIII, SECTION 3-C.

The committee of the whole proceeded to the consideration of section 3-C as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

VOTING WHEN ENGAGED IN MILITARY SERVICE.

1 Section 3-C. When an elector shall be absent in the military service of the
2 commonwealth or of the United States under a requisition by the president, he
3 may vote as if he were present in his place of residence subject to regulations
4 prescribed by law.

NOTE.

Source: Article VIII, section 6:

"Whenever any of the qualified electors of this commonwealth shall be in actual military service, under a requisition from the president of the United States or by the authority of this commonwealth, such electors may exercise the right of suffrage in all elections by the citizens, under such regulations as are or shall be prescribed by law, as fully as if they were present at their usual places of election."

Changes in Substance: None.

Clarifying Amendments: (1) The expressions "in actual military service," have been changed to read: "absent in military service" so as to make it clear that a person in military service and not absent from his place of voting is not included.

(2) The expression "military service * * * by the authority of this commonwealth" has been changed to read: "military service of the commonwealth," so as to make it clear that a person serving in a foreign army in consequence of a resolution of the general assembly approving such service, is not absent on the kind of military service contemplated.

Changes in Style: The commission's rules of style have been followed.

On the question,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE VIII, SECTION 5.

The committee of the whole proceeded to the consideration of section 5 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

PRIVILEGES OF ELECTORS.

1 Section 5. Electors shall, except in cases of treason, felony and breach or
2 surety of the peace, be privileged from arrest during their attendance on elections,
3 and in going to and returning from them.

NOTE.

Source: Article VIII, section 5:

"Electors shall in all cases except treason, felony and breach or surety of the peace, be privileged from arrest during their attendance on elections, and in going to and returning therefrom."

Changes in Substance: None.

Changes in Style: The concluding words, "in going to and returning therefrom," are, of course, incorrect. They have been changed to read as in article III, section 3, of the constitutions of 1790 and 1838.

On the question,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE VIII, SECTION 8.

The committee of the whole proceeded to the consideration of section 8 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

BRIBERY AT ELECTIONS. CHALLENGING OF ELECTORS. VIOLATION OF ELECTION LAWS. WITNESSES IN CONTESTED ELECTIONS AND ELECTION INVESTIGATIONS.

Section 8. A person who shall give, or promise or offer to give a valuable consideration for a vote at an election, or for the withholding thereof, or who shall receive or agree to receive, for himself or for another, a valuable consideration for a vote at an election or for the withholding thereof, shall forfeit the right to vote at such election. An elector whose right to vote shall be challenged for such cause before the election officers shall be required to swear or affirm that the subject matter of the challenge is untrue before his vote shall be received.

A person convicted of wilful violation of the election law shall, in addition to the penalties prescribed by law, lose for four years the right to vote.

In a trial of a contested election and in an investigation of elections, no testimony shall be withheld on the ground that it may criminate the witness or subject him to infamy. Such testimony shall not afterwards be used against him in a judicial proceeding except in a prosecution for perjury in giving such testimony.

NOTE.

Source: The section combines all provisions of the present constitution relating to the violation by an elector of the election law and the consequences of such violation; namely:

(1) Article VIII, section 8:

"Any person who shall give, or promise or offer to give, to an elector, any money, reward or other valuable consideration for his vote at an election, or for withholding the same, or who shall give or promise to give such consideration to any other person or party for such electors' vote or for the withholding thereof, and any elector who shall receive or agree to receive, for himself or for another, any money, reward or other valuable consideration for his vote at an election, or for withholding the same, shall thereby forfeit the right to vote at such election, and any elector whose right to vote shall be challenged for such cause before the election officers, shall be required to swear or affirm that the matter of the challenge is untrue before his vote shall be received."

(2) Part of article VIII, section 9:

"* * * and any person convicted of willful violation of the election laws shall, in addition to any penalties provided by law, be deprived of the right of suffrage absolutely for a term of four years."

(3) Article VIII, section 10:

"In trials of contested elections and in proceedings for the investigation of elections, no person shall be permitted to withhold his testimony upon the ground that it may criminate himself or subject him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceedings except for perjury in giving such testimony."

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE VIII, SECTION 11.

The committee of the whole proceeded to the consideration of section 11 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

ELECTION DISTRICTS.

1 Section 11. Townships, and wards of cities or boroughs shall form or shall
2 be divided into elections districts of compact and contiguous territory as the
3 court of quarter sessions may direct.
4 An election district in a city of over one hundred thousand inhabitants shall
5 be divided by the court of quarter sessions when at the next preceding election
6 more than two hundred and fifty votes have been polled therein. Any other
7 election district shall be divided when the court of quarter sessions shall be of
8 opinion that the convenience of the electors and the public interests will be
9 promoted thereby.

NOTE.

Source: Article VIII, section 11:

"Townships, and wards of cities or boroughs, shall form or be divided into election districts of compact and contiguous territory, in such manner as the court of quarter sessions of the city or county in which the same are located may direct; but districts in cities of over one hundred thousand inhabitants shall be divided by the courts of quarter sessions, having jurisdiction therein, whenever at the next preceding election more than two hundred and fifty votes shall have been polled therein; and other election districts whenever the court of the proper county shall be of opinion that the convenience of the electors and the public interests will be promoted thereby."

Changes in Substance: None.

Changes in Style: In the present constitution this section consists of one sentence. It relates, however, to two quite distinct subjects: one, the power and duty of the court of quarter sessions to divide townships and wards of cities and boroughs into election districts; and the other, the duty to divide an election district under certain specified conditions.

On the question,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE VIII, SECTION 14.

The committee of the whole proceeded to the consideration of section 14 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

ELECTION OFFICERS.

1 Section 14. In each election district there shall be an election board consist-
2 ing of a judge and two inspectors chosen by the electors of the district. They
3 shall hold office for two years. Each elector may vote for one candidate for
4 judge and for one candidate for inspector. Vacancies in election boards shall
5 be filled and election boards in new districts shall be created as prescribed by
6 law. Each inspector shall appoint one clerk at each election. An election
7 officer or clerk shall be privileged from arrest upon days of election and while
8 engaged in making up and transmitting returns except upon warrant of a court
9 of record or of a judge thereof for election fraud, for felony, or for wanton
10 breach of the peace. In a city he shall be exempt from jury duty.

NOTE.

Source: Article VIII, section 14:

"District election boards shall consist of a judge and two inspectors, who shall be chosen annually by the citizens. Each elector shall have the right to vote for the judge and one inspector, and each inspector shall appoint one clerk. The first election board for any new district shall be selected, and vacancies in election boards filled, as shall be provided by law. Election officers shall be privileged from arrest upon days of election, and while engaged in making up and transmitting returns, except upon warrant of a court of record or judge thereof, for an election fraud, for felony, or for wanton breach of the peace. In cities they may claim exemption from jury duty during their terms of service."

Changes in Substance: None.

Clarifying Amendment: As proposed the election boards will be chosen biennially (at the municipal elections, see article XII, section 3-A) instead of annually. At the present time the practice is to elect the members of election boards biennially. In spite of the wording of this section in the present constitution, the practice may be justified, article XII, section 1, of the present constitution (amendment of November 2, 1909), provides that "elections of local officers shall be held on a municipal election day." Article VIII, section 3 (amendment of November 4, 1903), speaks of the municipal election day as "in each odd-numbered year," and the schedule to the amendments of 1909 provides: "After the year 1910, * * * all terms of * * * election division officers shall begin on the first Monday of December in an odd-numbered year.

Changes in Style: Beginning the section with the declaration that "In each election district there shall be an election board" makes the style of the section conform to that of article V, section 5-B, and other sections in which provision is made for certain officers in each district.

Special Note to the Commission by the Committee on Style.

Recommendation for Change in Substance.

Strike out line ten "In a city he shall be exempt from jury duty."

The committee sees no reason why an election officer should be exempt from jury duty in a city or in the country. Exemption on election day, if the court should then sit, may safely be left to the judgment of the court.

On the question,

Will the committee adopt the section as reported?

The CHAIRMAN. There is a suggested change in substance to strike out line ten "in a city he shall be exempt from jury duty."

On the question,

Will the committee agree to the amendment?

Mr. KELLY. Why should they not be exempt in the country as well as in the city, because they are members of the election board?

The CHAIRMAN. We strike that out. He will have to serve in the city just as he must in the country. The situation now is that in cities they may claim exemption from jury duty during their terms of service. By adopting this amendment we strike that out.

Mr. KELLY. I think that is all right.

Mr. GORDON. I think the question was asked why that should be so in the city and not in the country.

The CHAIRMAN. Yes sir.

Mr. GORDON. The reason is because in a city like Philadelphia there are probably on election day five hundred or one thousand, possibly that is too many, but from four to five hundred jurors in service, and if they are not exempted from jury service on that day, there might be that many election offices elected by the people, because they are elective offices, who could not perform their duty, with the result that there would be curbstone elections or other devices for the purpose of filling those vacancies. In the country districts they are not so numerous and the courts as a general thing are not sitting on election day. I have no doubt that that was the reason for it originally because of the number of jurors in service on election day in the city. I think that is a good reason.

Mr. KELLY. But, Mr. Chairman, in cities, of course, are county institutions, and the county includes all the cities. The county of Lackawanna has two cities. The county of Luzerne has three, I think it is, Wilkes-Barre, Pittston and Hazelton. It seems to me that what Judge Gordon says would apply to such counties as those. We would not have four or five hundred men sitting on juries, but we would have sixty or seventy or something like that.

Mr. REED. Don't your courts adjourn on election days?

Mr. KELLY. Not always. It is a matter of practice taken care of by the judges of the court excusing a juror who says he wants to serve on an election board. I do not know that it is sufficiently important to adopt it here or not, but the same reason that would make it apply to the city, the same reason that would allow a juror to be excused if he is in a city because he is on an election board, might apply to the country because, as I say, we have some from the city districts and some from the country districts, and the courts are not in session very often on election day.

The CHAIRMAN. As the chair understands this, they would be exempt from jury duty during their entire term as election officers, that is, two years. A man in the city says he is an election officer, and he is excused no matter whether election is on or not.

Mr. GORDON. I think telegraphers are exempt by law and members of the state militia are exempt from jury duty, and there may be some others, I forget, but that was the purpose anyhow.

Mr. REED. Would not the whole thing be met by saying that he shall be exempt from jury duty on election day?

Mr. GORDON. No, because that might leave a court short of jurors.

On the question recurring,

Will the committee agree to the amendment?

It was not agreed to.

On the question recurring,

Will the committee agree to the section as reported?

Mr. REED. Well, that exempts him during his whole two years in service.

The CHAIRMAN. Yes, sir.

On the question recurring,

Will the committee agree to the section as reported?

It was agreed to.

ARTICLE VIII, SECTION 16.

The committee of the whole proceeded to the consideration of section 16 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

OVERSEERS OF ELECTIONS.

1 Section 16. The courts of common pleas shall appoint two persons, of differ-
2 ent political parties, qualified to serve on an election board, to be overseers of
3 election in a district on petition of five citizens setting forth that such appoint-
4 ment is a reasonable precaution to secure the purity and fairness of the election.
5 All the judges of the court able to act at the time shall concur in the appointment.
6 The overseers of election, if they shall agree, shall decide any question with
7 respect to the conduct of the election on which the members of the election board
8 shall differ.

NOTE.

Source: Article VIII, section 16:

"The courts of common pleas of the several counties of the commonwealth shall have power within their respective jurisdictions, to appoint overseers of election to supervise the proceedings of election officers and to make report to the court as may be required; such appointments to be made for any district in a city or county upon petition of five citizens, lawful voters of such election district, setting forth that such appointment is a reasonable

precaution to secure the purity and fairness of elections; overseers shall be two in number for an election district, shall be residents therein, and shall be persons qualified to serve upon election boards, and in each case members of different political parties; whenever the members of an election board shall differ in opinion the overseers, if they shall be agreed thereon, shall decide the question of difference; in appointing overseers of election all the law judges of the proper court, able to act at the time shall concur in the appointments made."

Change in Substance: The petitioners and overseers are not required to be residents of the district, because conditions may make this impossible even though the appointment of overseers may be urgently necessary.

Clarifying Amendment: Under the wording of the corresponding section in the present constitution, it is uncertain whether the court can only appoint overseers on the petition of five citizens, or whether the court can also appoint on its own motion. The wording suggested adopts the first of these alternatives.

Changes in Style: The commission's rules of style have been followed.

Special Note to the Commission by the Committee on Style.

Recommendation of Change in Substance.

Strike out line 3 "citizens" and insert "electors of the county."

The committee believes that there should be some requirement as to the residence of the petitioners.

On the question,

Will the committee adopt the section as reported?

The CHAIRMAN. The recommendation of the Committee on Style is to strike out in line 3 the word "citizen" and insert "electors of the county."

On the question,

Will the committee agree to the amendment?

It was agreed to.

On the question.

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE VIII, SECTION 16-A.

The committee of the whole proceeded to the consideration of section 16-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

TIME OF HOLDING ELECTIONS.

1 Section 16-A. The general election shall be held in each even-numbered
2 year and the municipal election shall be held in each odd-numbered year. Each
3 shall be held on the Tuesday next following the first Monday in November
4 unless, with the consent of two-thirds of the members of each house of the
5 general assembly, a different day shall be prescribed by law.

NOTE

Source: (1) Article VIII., section 2 (amendment of November 2, 1909):

"The general election shall be held biennially on the Tuesday next following the first Monday of November in each even-numbered year, but the general assembly may by law fix a different day, two-thirds of all the members of each house consenting thereto: Provided, That such election shall always be held in an even-numbered year."

(2) Part of article VIII., section 3:

"* * * All elections" for (certain offices enumerated) "shall be held on the municipal election day; namely, the Tuesday next following the first Monday of November in each odd-numbered year, but the general assembly may by law fix a different day, two-thirds of all the members of each house consenting thereto: Provided, That such elections shall be held in an odd-numbered year. * * *"

(See article VII., section 3-A., infra, for the offices filled at a general and the offices filled at a municipal election.)

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

It was adopted.

Mr. KELLY. If I might be allowed to inquire, this one that we have just passed, the courts of common pleas shall appoint two persons of different political parties qualified to serve on an election board, to be overseers of election in a district on petition of five citizens of the county is amended.

The CHAIRMAN. Yes, sir.

Mr. KELLY. I would like to have information. Does that mean that the court can appoint the overseers of an election as we call them from any part of the county? That is to say, an elector of one ward or district can be appointed an overseer in another, is that the idea?

The CHAIRMAN. Yes, that was the idea. You will remember, at the hearing; an address was made to us on that subject and those who advocated the change insisted that if electors could go out of the district and get an overseer it was useless to have him appointed.

Mr. KELLY. It seems to me it is a little bit ambiguous as it reads now. It might be left as a matter of interpretation, but now it might be argued that it is not the intention to elect him outside of the district. I presume that was taken into consideration by the committee.

The CHAIRMAN. Yes, that was the thought of the committee that he could be appointed outside.

ARTICLE VIII, SECTION 16-B.

The committee of the whole proceeded to the consideration of section 16-B as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

SECRECY IN VOTING.

1 Section 16-B. In elections secrecy in voting shall be preserved.

NOTE.

Source: Article VIII, section 4, which reads as follows:

"All elections by the citizens shall be by ballot or by such other method as may be prescribed by law: Provided, That secrecy in voting be preserved." (Amendment of November 5, 1901.)

Changes in Substance: None.

Clarifying Amendment: The wording suggested makes it certain that secrecy in voting shall be preserved when the method of voting is by ballot. This is not absolutely certain under the wording of the present constitution.

The constitutions of 1790 and 1838 required all elections to be by ballot. Secrecy in the voting was not specificaly provided for. In the present constitution the voting can be by ballot or by such other method as may be prescribed by law. The concluding words of the section in the present constitution—"provided that secrecy in voting be preserved"—not only requires that secret voting be preserved when another method of voting than by ballot is adopted, but may also require secrecy when the method of voting by ballot is used. This, however, is only an inference. The suggested rewording, which omits all reference to voting by ballot, does not change the substantive provisions in the present constitution, and does make it clear beyond doubt that whatever method is adopted, whether the method of voting by ballot or another method, secrecy in voting must be preserved.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

Mr. FOX. It seems to me desirable that we should provide that some other method may be adopted by the commonwealth for voting. Some of our sister commonwealths are now using electrical methods of recording votes. I therefore move to substitute for section 16-B the following: "All elections by the citizens shall be by ballot or by such other methods as may be prescribed by law, but whatever the method adopted secrecy in voting shall be preserved."

Mr. GORDON. Mr. Chairman: I second the substitute.

The substitute was agreed to.

ARTICLE VIII, SECTION 17.

The committee of the whole proceeded to the consideration of section 17 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

TRIAL OF CONTESTED ELECTIONS.

1 Section 7. Except as in this constitution expressly provided, the courts shall
2 have jurisdiction to determine contested elections in the manner prescribed by
3 law enacted before the election.

NOTE.

Source: Article VIII, section 17:

"The trial and determination of contested elections of electors of president and vice president, members of the general assembly, and of all public officers, whether state, judicial, municipal or local, shall be by the courts of law, or by one or more of the law judges thereof; the general assembly shall, by general law, designate the courts and judges by whom the several classes of election contests shall be tried, and regulate the manner of trial and all matters incident thereto; but no such law assigning jurisdiction, or regulating its exercise, shall apply to any contest arising out of an election held before its passage."

Changes in Substance: None.

Clarifying Amendment: The exception refers to contested elections of members of the general assembly (article II, section 4-B) and of governor and lieutenant governor (article IV, sections 5-B and 12-A). The decision of the supreme court in contested election of McNeill, 111 Pa. 235, established the paramount right of each house of the general assembly to pass on the election of its own members. The commission suggests that the provisions of the constitution should be explicit on this subject and also on the subject of contested elections of governor and of lieutenant governor.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

Mr. GORDON. May I call the commission's attention to a matter in this section? "Except as in this constitution expressly provided, the court shall have jurisdiction to determine contested elections in the manner prescribed by law enacted before the election." That is the committee's report on this clause which was adopted by the commission. As it was adopted by the commission section 17, "The trial and determination of contested elections of electors of president and vice-president, members of the general assembly and of all public officers, whether state, judicial, municipal or local, shall be by the courts of law or by one or more of the law judges thereof: the general assembly shall, by general law, designate the courts and judges by whom the several classes of election contests shall be tried, and regulate the manner of trial and all matters incident thereto; but no such law assigning jurisdiction, or regulating its exercise, shall apply to any contest arising out of an election held before its passage."

Now, the effect of this change in style, which is a very material change in substance, is that the trial of contested elections is left entirely with the general assembly, and they may not provide for any contested elections whatever. The existing constitution and the constitutional section which this commission adopted provided that there should be legislation for the contesting of the elections named in that section. The committee in these three lines simply says: "Except as in this constitution expressly provided, the courts shall have jurisdiction to determine contested elections in the manner prescribed by law enacted before the election." There is there no definite provision that there may be any election contest. I might also say that since primary elections have become a part of the election law of the state this provision of the constitution would probably not cover those cases because this is a provision for contested elections, and they are not elections, they are primaries for nominations. But anyhow it seems to me the committee has exceeded its power in so altering this section that there at least is a reasonable doubt whether the legislature could not repeal all existing legislation and make no provision whatever for any contested elections, and that was never the intent of this commission.

The CHAIRMAN. It was not the intent of the committee. The intent of the committee was that contested elections should be fixed in the court. .

Mr. GORDON. Yes, but they struck out all of the language which provided that there should be methods providing for the contesting of election of all offices.

The CHAIRMAN. I see the point of your criticism, and I think it is well taken.

Mr. GORDON. I move to substitute the section as adopted by the commission.

Mr. FOX. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the substitute?

The CHAIRMAN. The secretary calls attention to the fact that it may be an important thing to provide "Except as otherwise provided in this constitution," because of the provision in the constitution as to contest for the office of governor and members of the general assembly. Would there be any objection to that?

Mr. GORDON. Not at all. If there is a provision for contesting the election of a governor somewhere in the constitution, very well.

The SECRETARY. In article 11, section 4-B, which corresponds exactly with the present constitution, there is a provision that the election of the members of the general assembly shall be determined by the general assembly, and in article IV, section 5-B and section 12-A, which correspond to existing provisions in the present constitution, there is a direct provision for election contests for governor and lieutenant governor.

Mr. GORDON. Mr. Secretary, that is all right; but there is a provision of law now for the contesting of elections of members of the general assembly, representatives and senators; but then providing that the decision shall have only a persuasive effect upon the legislature, which, of course, is in the last analysis the judge of the qualification of its members, and on this point any contest for

senator and representative in the court is a decree that one of the contestants is entitled to a certificate of election, and that is served on the legislature. The legislature then tries the contest itself, but there is a method provided by law which establishes a system for trying also in the courts the contested elections and for a determination by the courts as to which contestant is entitled to the certificate of election, that is a certificate of election, that is all, the certificate of election, not the office, and that goes to the legislature for whatever persuasive value the legislature chooses to give it. That is a law today, and it should be in the constitution.

On the question recurring,

Will the committee agree to the substitute?

It was agreed to.

ARTICLE VIII, SECTION 17-C.

The committee of the whole proceeded to the consideration of section 17-C as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

ELECTIONS BY PERSONS IN REPRESENTATIVE CAPACITY.

1 Section 17-C. Elections by representative bodies shall be viva voce.

NOTE.

Source: Article VIII, section 12:

"All elections by persons in a representative capacity shall be viva voce."

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE IX, SECTION 1.

The committee of the whole proceeded to the consideration of section 1 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

TAXES TO BE UNIFORM.

1 Section 1. Taxes shall be levied and collected only as prescribed by law. A
2 tax shall be uniform upon the same class of subjects within the territorial limits
3 of the taxing authority, except that part of a decedent's estate may be exempted
4 from inheritance taxes.

NOTE.

Source: Part of article IX, section 1:

"All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws; * * *"

Changes in Substance: A reasonable amount of a decedent's estate may be exempted from an inheritance tax. The supreme court has held that such exemption is not permitted under the present constitution, except in the case of the collateral inheritance tax collected under a law enacted before the constitution became effective (Cope's Estate, 191, Pa. 1). The Commission believe that the enactment of laws should be permitted to exempt small estates from such taxes. The majority of the Commission do not regard it as desirable to permit graduated inheritance taxes.

Changes in Style: In the present constitution the part of article IX, section 1, embodied in this section ends with the words "and shall be levied and collected under general laws." As uniformity is provided for in the first part of the section, the only possible meaning to attach to the words quoted would appear to be the prohibition against levying and collecting taxes by executive order. This is a very important provision and therefore we have made it the subject of the opening sentence of the revised section.

The provision that a "reasonable exemption from inheritance taxes may be allowed" limits the rule of uniformity only. It does not limit the rule that "taxes must be levied and collected as prescribed by law." For this reason we have transposed the order of these clauses.

The substance of the last clause of article IX, section 1, of the present constitution has been transferred to article IX, section 2, as proposed.

Special Note to the commission by the committee on style.

Recommendations of Change in Substance.

(1) Strike out all after "authority," on line 3, and insert: "except that part of an income or of a decedent's estate may be exempted from income and inheritance taxes."

There is no apparent reason why an exception should be permitted in the case of inheritance taxes, and not in the case of income taxes.

(2) Insert, as a second paragraph, the following:

"Laws may be enacted providing for the levying and collecting of a special tax on anthracite coal when prepared for market. The proceeds of such tax shall be appropriated by law to the relief of persons, partnerships, corporations and municipalities injured or damaged by surface subsidence resulting from past or future mining of anthracite coal."

On the question,

Will the committee adopt the section as reported?

Mr. PINCHOT. Mr. Chairman: I would like to move to insert after the word "authority," line 3, the following: "that the subjects of taxation may be classified for the purpose of laying graded or progressive taxes," that to be followed by the amendment of the committee at the end of their recommendation.

Mr. VOLL. I second the amendment.

On the question,

Will the committee agree to the amendment?

Mr. PINCHOT. The amendment, Mr. Chairman, is one that Mr. Pepper spoke for, as I understand it, and it reads as follows: "Taxes shall be levied and collected as prescribed by law, and taxes shall be uniform upon the same class of subjects within the territorial limits of the taxing authority." That is as it now stands, but this is added, "but the subjects of taxation may be classified for the purpose of laying graded or progressive taxes, except that part of an income of the decedent's estate may be exempted from income and inheritance taxes."

Mr. Chairman, I would like to say in support of that motion that whether this constitution is a progressive document or a reactionary document will be gauged mainly by the people of Pennsylvania on what it says about taxes. There is no other question so keen and goes so directly to the root of the matter as the question of who is made to pay the expenses of government. Now, as I understand it, the most important point in which the present constitution of Penn-

sylvania differs from the constitution of the United States is precisely the one at issue here, that under the constitution of the United States as it was framed by the fathers graded and progressive taxation is permitted. That principle has recently been approved by the people of the United States, and the income tax law has been passed and is now in effect. Under the constitution of the United States it is expressed outright that the very large surplus of a very rich man, or the extreme case, should be taxed in higher percentage than the very small income of a very small man, the poor man; in other words, that the taxation upon the surplus of a big man should bear an entirely different relation to the actual amount than the tax which was laid upon the need of the working man or the working woman. This provision of our present constitution which forbids progressive taxation is clearly against the interests of the great majority of people of this state in that it lays the burden not on the dollar, but on the man.

It is a perfectly easy thing to say it is fair to have every dollar pay equally. It sounds well, but when you consider the effect that what we ought to be interested in is not the equality of the dollar, but the equality of the burden on the man, then that phrase, fails entirely, it seems to me. As I said before, Washington and Jefferson and others who framed the constitution of the United States held that it was fair to leave an opening for a graded taxation. All progressive constitutions of which I am aware provide for precisely that thing, and it seems to me that there can be no reason in the world why our people should be expected to approve a document which does not stand on the level with the constitution of the United States, in the first place as to justice to the people who ought to be relieved so far as possible from taxation, and in the second place is not in line with modern constitution-making. I believe that this matter is likely to be the crucial test as to whether this constitution which we have worked on so long is approved by the people of the state of Pennsylvania or is cast away, if it ever gets to that point. It seems to me that they will inevitably judge as to just this whether we have tried to be just to the individual and make the burden for the man reasonable, or whether we have limited the whole thing and let the superfluity of the rich man bear only the same percentage of taxation as the need of the poor man. Personally I feel so strongly about this matter that I believe that a constitution which does not provide for the progressive or graded taxation should never be approved in this state or any other state. As I said before, I am confident that this will be the point on which the people of the state of Pennsylvania will turn thumbs up or thumbs down if this constitution ever gets to that point.

Mr. REED. We have had that subject up and down and debated it here four or five times. It does not seem necessary to say much more about it. The argument especially made by Mr. Carson, who I am sorry is not here today, was especially strong on that subject. So long as the government of the United States has introduced into its system a progressive scheme of taxation, with increasing surtax, there comes a time when the state of Pennsylvania must be reasonable in its taxation. The state does not need a revenue that is derived from confiscation; its necessities do not require that. There is

nothing in the constitution today that prevents the legislature from imposing a state income tax if they need it. When the state has exhausted all its resources, it sources taxation from their property, its state income tax, its inheritance tax, and its necessities are so great that it must adopt a new policy or method and begin to confiscate capital through sur charges, it will be time then for the people to take it up and amend the constitution. But why we should throw open the door so long as the United States has imposed the tax that it has on people in business, why we should throw open the door to a system of progressive taxtation which is not needed in this state, is a mystery to me. With due respect to Mr. Pinchot, it is only because of the desire, that restless desire, to do something new, glorifying it under the term progressive, that this is advocated. It is a good thing to hold on to the old landmarks. I am not ashamed to be considered in that respect a reactionary. I want to criticise the wording of that provision as to inheritance tax. It does not seem to me it reaches the case. I think the intention was to exempt all the estates below a certain amount. As it is worded, if an estate is only valued a one thousand dollars you wll have to tax a part of it and only exempt a part of it, whereas I think the intention was to make properties of one thousand dollars or properties of two thousand dollars, all the estates below that completely clear of inheritance tax. That is the way it ought to be.

The CHAIRMAN. The secretary suggests that he would like to read the amendment to be sure that he has it correctly.

The secretary read the amendment as follows:

> Insert on line 3 after the word "authority" the words "the subjects of taxation may be classified for the purposes of laying graded or progressive taxes, except that part of an income of a decedent's estate may be exempt from income and inheritance taxes."

On the question recurring,

Will the committee agree to the amendment?

It was not agreed to.

On the question recurring,

Will the committee agree to the section as reported?

Mr. FOX. It seems to me that the suggestion made by Judge Reed, the criticism that he made is a sound one, and that we ought to correct that last clause "except that part of an income or of a decedent's estate may be exempted from income and inheritance taxes." I do not know whether that meets the Judge's idea or not, and I offer that as an amendment.

The CHAIRMAN. I will accept that amendment for the committee, I know that it is a better phrase.

Mr. REED. You don't want to exempt the whole income?

The CHAIRMAN. No, sir.

Mr. REED. No, you don't want to exempt the whole income. We are trying now to get a minmum amount that may be exempted, and we want to get it so worded that income on estate below a minimum amount may be exempted, and then I think we get at what we are trying to do.

The CHAIRMAN. Would not the words, "the whole or a portion of the decedent's estate may be exempted from income and inheritance taxes," cover the question?

Mr. REED. Except that income below a prescribed minimum. The minimum may be exempted by the legislature, is what we are trying to get at, it seems to me.

The CHAIRMAN. Is that satisfactory to Judge Fox?

Mr. FOX. Yes, sir.

The CHAIRMAN. The secretary wants to be certain that he has it correctly.

The SECRETARY. Make it read "except that income of a decedent's estate below a minimum prescribed by law may be exempted from income and inheritance taxes."

The CHAIRMAN. Is that satisfactory to Judge Fox?

Mr. FOX. Yes, sir.

On the question,

Will the committee agree to the amendment?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

The CHAIRMAN. The next suggested amendment is the one relating to a separate tax on anthracite coal and pay for the mine-cave situtation as reported by the committee.

On the question,

Will the committee agree to the amendment?

Mr. ENGLISH. Mr. Chairman: I merely wish to call your attention to the fact that the word "partnerships" seems to be used in this section probably for the first and only time in the constitution. The word ordinarily employed in other sections is the word "associations," and I move to strike out the word "partnerships" and to insert after the word "corporations" the words "or associations," or rather the singular word "association" I think would express the thought a little better.

Mr. GORDON. Mr. Chairman: I second the amendment to the amendment.

On the question,

Will the committee agree to the amendment to the amendment?

It was agreed to.

On the question,

Will the committee agree to the amendment as amended?

Mr. KELLY. Mr. Chairman: With reference to second amendment on the subject of mine-caves, Judge Reed suggested sometime this morning that this amendment, if adopted, might be, or in his judgment would be, declared unconstitutional, that is to say, it is in conflict with the federal constitution, the fourteenth amendment, I presume, and he had in mind the taking of property. It looks to me as though that would be right. The way this is stated is "Laws may be enacted providing for the levying and collecting of a special tax on anthracite coal when prepared for market. The proceeds of such tax shall be appropriated by law to the relief of persons, partnerships, corporations and municipalities injured or damaged by surface subsidence resulting from past or future mining of anthracite coal." In other words, that as drawn would be open to the charge that it was a taking of the money from A and giving it to B, if you please, which might be held to be the depriving one of property without due process of law. I do not think that this commission would want to provide this remedy for the troubles that we have up in the region that I come from with any idea that it should fall by the wayside on account of being open to a constitutional objection, and inasmuch as the expression that Judge Reed made struck me with a great deal of force, I think that there ought to be some slight

change made in that provision so as to make it less likely to be open to a constitutional objection from the standpoint of the federal constitution. With that thought in view I would move to amend this proposed change by striking out in the second line. "The proceeds of such tax" and inserting in lieu thereof "and such money as may be necessary," so that it would read, "Laws may be enacted providing for the levying and collecting of a special tax on anthracite coal when prepared for market, and such moneys as may be necessary shall be appropriated by law to the relief of persons, partnerships, corporations and municipalities," and so on. In other words, unless the tax which may be levied and collected upon anthracite coal is put into a general pot, if I may use such a sporting expression, it would be open to attack at least that it violated the fourteenth federal amendment, federal constitutional amendment. It would at least be less likely to be open to that objection as worded, or less likely to be open to that objection if worded in the manner which Mr. Edgar, who appeared here some months ago before this commission, proposed the clause. The clause as submitted by Mr. Edgar and as endorsed by the mayor of Scranton, the city solicitor, the city treasurer and the Scranton board of trade and Scranton surface protective association, reads as follows. "The general assembly, however, may provide for the levying and collecting of a tax on all anthracite coal in this commonwealth when prepared for market, and shall appropriate all or such portion of such tax as may be necessary to the relief of any person or municipalities injured or damaged by surface subsidence resulting from past or future mining of anthracite coal." That provision as submitted by those gentlemen, it seems to me, would be less likely to be open to the charge of being unconstitutional than the one that is recommended by the committee on style. It is not my purpose to make any argument in favor of a provision of this kind, because everything that could be said I think was said by the gentleman who appeared here at the time we had our hearing. The secretary of the board, Mr. Edgar, and several other gentlemen explained to the commission just what the situation was, and advanced the arguments, which I think are sound ones, in favor of the giving of some relief to the anthracite region. I am sure the members of the commission who visited Scranton a few weeks ago and saw the situation there must be satisfied that it is a public question and not a private one, and a legitimate question for the granting of relief if the form of relief could be agreed upon by this commission. At any rate I would offer this amendment that I just proposed with the idea in mind that it would remove or at least attempt to remove, the objection which might be made, and which, if a good objection, would defeat the entire purpose of the commission in providing for some relief for the anthracite region.

Mr. CUYLER. Would not your provision, Judge Kelly, make it mandatory upon the legislature to make such an appropriation? It seems to me there is no direct power to provide that the legislature must appropriate out of the public treasury. That opens the door pretty wide.

Mr. KELLY. Mr. Chairman My answer to Mr. Cuyler's question would be that, if a legislature saw fit to enact laws providing for the levying of a tax on anthracite coal, then it would be mandatory to appropriate such sums of money as would be necessary to relieve the situation which grows from the mining of this coal; but the

The CHAIRMAN. Is that satisfactory to Judge Fox?

Mr. FOX. Yes, sir.

The CHAIRMAN. The secretary wants to be certain that he has it correctly.

The SECRETARY. Make it read "except that income of a decedent's estate below a minimum prescribed by law may be exempted from income and inheritance taxes."

The CHAIRMAN. Is that satisfactory to Judge Fox?

Mr. FOX. Yes, sir.

On the question,

Will the committee agree to the amendment?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

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change made in that provision so as to make it less likely to be open to a constitutional objection from the standpoint of the federal constitution. With that thought in view I would move to amend this proposed change by striking out in the second line. "The proceeds of such tax" and inserting in lieu thereof "and such money as may be necessary," so that it would read, "Laws may be enacted providing for the levying and collecting of a special tax on anthracite coal when prepared for market, and such moneys as may be necessary shall be appropriated by law to the relief of persons, partnerships, corporations and municipalities," and so on. In other words, unless the tax which may be levied and collected upon anthracite coal is put into a general pot, if I may use such a sporting expression, it would be open to attack at least that it violated the fourteenth federal amendment, federal constitutional amendment. It would at least be less likely to be open to that objection as worded, or less likely to be open to that objection if worded in the manner which Mr. Edgar, who appeared here some months ago before this commission, proposed the clause. The clause as submitted by Mr. Edgar and as endorsed by the mayor of Scranton, the city solicitor, the city treasurer and the Scranton board of trade and Scranton surface protective association, reads as follows. "The general assembly, however, may provide for the levying and collecting of a tax on all anthracite coal in this commonwealth when prepared for market, and shall appropriate all or such portion of such tax as may be necessary to the relief of any person or municipalities injured or damaged by surface subsidence resulting from past or future mining of anthracite coal." That provision as submitted by those gentlemen, it seems to me, would be less likely to be open to the charge of being unconstitutional than the one that is recommended by the committee on style. It is not my purpose to make any argument in favor of a provision of this kind, because everything that could be said I think was said by the gentleman who appeared here at the time we had our hearing. The secretary of the board, Mr. Edgar, and several other gentlemen explained to the commission just what the situation was, and advanced the arguments, which I think are sound ones, in favor of the giving of some relief to the anthracite region. I am sure the members of the commission who visited Scranton a few weeks ago and saw the situation there must be satisfied that it is a public question and not a private one, and a legitimate question for the granting of relief if the form of relief could be agreed upon by this commission. At any rate I would offer this amendment that I just proposed with the idea in mind that it would remove or at least attempt to remove, the objection which might be made, and which, if a good objection, would defeat the entire purpose of the commission in providing for some relief for the anthracite region.

Mr. CUYLER. Would not your provision, Judge Kelly, make it mandatory upon the legislature to make such an appropriation? It seems to me there is no direct power to provide that the legislature must appropriate out of the public treasury. That opens the door pretty wide.

Mr. KELLY. Mr. Chairman My answer to Mr. Cuyler's question would be that, if a legislature saw fit to enact laws providing for the levying of a tax on anthracite coal, then it would be mandatory to appropriate such sums of money as would be necessary to relieve the situation which grows from the mining of this coal; but the

language of this proposed amendment does not make it obligatory upon the legislature to impose any tax upon anthracite coal at all. It says "laws may be enacted," which, of course, is merely permissive, my thought being that the provision ought to be that "laws may be enacted," not "shall be," but "may be enacted providing for the levying and collecting of a special tax on anthracite coal," and in connection with that provision that there shall be mandatory language that such moneys shall be appropriated as would compensate "persons partnerships," and so forth. In other words, there is no reason why a special tax should be levied upon anthracite coal any more than upon any other special subject or industry, or any other mineral, unless it is for the purpose of providing a fund for the taking care of the damage which happens from the prosecution of the business or mining anthracite coal. I am now repeating some of the arguments that these gentlemen made on this subject, and that is my answer to Mr. Cuyler.

Mr. CUYLER. Let us hear the proposed amendment again.

Mr. KELLY. My proposed amendment is to strike out,—I am reading now from the suggested amendment of the committee on style, after the words "market" in the second line, "the proceeds of such tax," strike out those words, and insert in lieu thereof "and such moneys as may be necessary," so that it will read, "when prepared for market, and such moneys as may be necessary shall be appropriated by law to the relief of persons, partnerships," and so forth.

Mr. CUYLER. Mr. Chairman: I again raise the point as to whether those two sentences would be read together, whether they would not give rise to grave doubt and ambiguity, whether it might not be urged that it would be within the power of the legislature to pass an act which would not secure the relief proposed. I do not think the last sentence of the clause follows the first.

The CHAIRMAN. Is Judge Kelly's amendment seconded?

Mr. GORDON. Mr. Chairman I second the amendment.

On the question,

Will the committee agree to the amendment?

Mr. KELLY. My proposed amendment is to strike out of the second paragraph as recommended by the committee on style in line two "The proceeds of such tax," and insert in lieu thereof the following words: "and such moneys as may be necessary." They are to be inserted in lieu of the words which I suggest striking out, so that it shall read " and such moneys as may be necessary shall be appropriated by law for the relief of persons," and so forth.

On the question recurring,

Will the committee agree to the amendment?

Mr. GORDON. I submit to Judge Kelly the thought that that would permit an appropriation in excess of the tax derived from coal.

Mr. KELLY. Mr. Chairman: I think that is correct.

Mr. GORDON. I would limit it to the amount of the tax.

Mr. KELLY. The objections I have to limiting it to the amount of the tax, Judge Gordon, is that I fear that the suggestion Judge Reed made this morning that such a provision would not be constitutional, that is to say, the argument might be made that it was a provision for taking money out of A's pocket and putting it into B's and would be taking property without due process of law.

Mr. GORDON. That argument would apply to your amendment.

Mr. KELLY. It might, to some extent.

Mr. GORDON. I am afraid it will.

Mr. KELLY. It may be open to objection even as amended, but the last suggestion Judge Gordon made, that it might be out of moneys otherwise raised, I think that fact would lend strength to the argument that it was not open to constitutional objection. I further think, and it was my thought to bring it to the attention of the commission when we go back to section 18-A of article III, I think it is on the subject of appropriations, that this constitution may leave it open legally, if you please, that appropriations may be made to relieve this mine-cave situation because there is no doubt if the constitution of Pennsylvania says so the state may make appropriations just as they may make appropriations for relief from the consequence of floods, as the chairman stated, taking the Johnstown flood for example, where there was some question as to the right of the state to make an appropriation to relieve the situation there. It was a public situation, it was perhaps more eminent than ours, and more imperative and required greater speed, and yet I think the difference was in degree and not in kind. I think the constitution ought to make it legal to relieve a situation such as we have, whether it be through the general tax, or the taking a part of the tax that might be raised in a certain way. I think there is less objection to the former, of course, than there would be to the latter, I mean from the constitutional standpoint. This is a practical situation that we have to deal with there, and the gentlemen, as I say, who visited the region I think recognize that. The public authorities of Scranton, the city solicitor, and the attorney who represented the board of trade, I have no doubt gave a great deal of thought to the remedy, and on that account I am very much prejudiced, in favor of the language which they themselves submitted. But yet I offer this amendment because conscientiously I think it is less open to the objection that might be made againt it as violating the fourteenth amendment of the federal constitution. If the commission does not agree with me then I would be very glad if the commission should adopt the provisions submitted by those gentlemen, because I have a good deal of respect for the legal ability of the gentlemen who have especially had it in mind and who advocated it, if you please, at the time of our open hearing.

Mr. FOX. I think, as Judge Kelly has said, there is no member, in this commission who visited Scranton recently can have any doubt as to the necessity for some relief of the people of Scranton, and I would be very glad to vote for any measure that I felt conscientiously was proper. I understood at the time we had the hearing in Scranton on this question of the constitutionality of a provision of this character it was suggested that counsel for the board of trade or the city solicitor or some of the parties interested would submit to us a brief on the subject, pointing out how we could successfully meet the legal question involved. It may be that the other members of the commission have received such a brief. I have not, unfortunately. The only brief that I have received was one submitted by Mr. Williams, an argument against the imposition of this tax, and I can say that the amendment which has been suggested by the committee on style, a modification of it as made by Judge Kelly, has not persuaded me of the safety of adopting as a part of the constitution which we are recommending a provision of that character.

Mr. GORDON. Judge Kelly, I suggest this phrase, "an appropriation not to exceed the amount of the proceeds of such tax may be appropriated," and so forth. I suppose I didn't hear Judge Reed—

Mr. KELLY. Mr. Chairman: I accept that, so far as I am concerned.

Mr. GORDON. I did not hear Judge Reed's argument or suggestion, but I presume it is that no tax money as such may be diverted to private relief of any kind.

Mr. REED. Why say a special tax levied on anthracite coal, and in the same section apply it to relief.

Mr. GORDON. Exactly, why ear-mark that particular tax?

Mr. THORPE. This would not do that, "an appropriation not exceeding the amount of the proceeds of such tax may be appropriated."

Mr. KELLY. I would be glad to accept, that, Judge Gordon.

Mr. GORDON. Unless you think it is an improvement, I would not do it.

Mr. KELLY. I think it is an improvement.

On the question recurring,

Will the committee agree to the amendment?

It was agreed to.

On the question recurring.

Will the committee agree to the section as amended?

Mr. REED. Pardon me, Judge Sulzberger's objection this morning ought to be considered. He suggested inserting the word "hereafter," "associations, corporations and municipalities hereafter injured or damaged." He said there was no limit if you did not. I do not advocate it one way or the other; he made the objection this morning.

Mr. KELLY. The objection, I think, to Mr. Sulzberger's suggestion, I do not think he moved for an amendment, he suggested that there ought to be some limit, which seems to be this: The damage which happens as the result of mining coal sometimes actually happens long years after the coal is mined. In other words, pillars of coal left in the ground by the action of air and time disintegrate to a certain extent and they become weak, and the damage might happen to my property to-morrow which resulted from the mining of yesterday or last year.

Mr. REED. It is covered by the last line, "resulting from past or future mining."

Mr. KELLY. I guess that is right.

Mr. McCORMICK. Suppose a man fifty years ago lost his property.

Mr. KELLY. I think you are right when you say we should not go back fifty years. Yet in some of these cases, Mr. Chairman—you were in Scranton—a particular road there. West Lackawanna avenue, down North Main avenue, where the public highways, if you please, are in a very deplorable condition. These I speak of as being glaring examples of the situation that requires relief, and if Judge Sulzberger's suggestion was adopted here there could be no relief for that situation. Now, it seems to me the legislature could be trusted in that matter and that they might well put a reasonable statute of limitation, as you might call it, upon any relief that they may give. They would certainly have that power. In other words, there is a situation, I mean the conditions on the streets, because I know, Mr. Chairman, that you and others saw some of those, and there are others in the same condition, where the city of Scran-

ton ought to receive some relief if the legislature should see fit; and if the people should ever adopt this constitutional provision, if it shall be inserted, that would relieve most of that situation. Now, with reference to "hereafter," I say, strike that out, and if there is anybody that can suggest anything between the two extremes, I would be glad to accept it, speaking for myself; but I do not think the word "hereafter" ought to be put in there because it would prevent the municipality from getting any relief, and it would be a very expensive proposition to restore those particular highways.

Mr. McCORMICK. Could you fix a limit of ten years, fix it ten years after 1910?

Mr. KELLY. We could not.

Mr. FOX. Isn't it true that the supreme court has recently decided a case requiring that the support of the highway must be maintained no matter what the conditions may be?

Mr. KELLY. That is true, Mr. Justice Fox. There is no doubt in my mind as to the protection that the highways have under the law, not only by reason of the decision of the supreme court, but by the law as it existed right along. There never has been very much doubt about it, but unfortunately we have this situation. Take the streets that I have just called to your attention, the mining which was being done at the time that those streets collapsed is said not to be the mining which caused the collapse. In other words, there were mine workings under those streets thirty or forty years ago, and certain of the older veins were abandoned, were worked out, pillars left, if you please, left too small, as I said, to maintain the surface, and by the action of the air on the pillars and by the action of time those pillars became weakened so that they collapsed, so that when that subsidence happens to those particular streets a dispute arises, a dispute whether or not the subsidence was due to some recent mining in some other vein which the mining company was then operating, or whether they were not due to the collapse of the pillars which were left thirty or forty years ago. That is a practical question that comes up. It is a question of fact, and it has nothing to do with the question of law or the mining company that mined in those parts thirty or forty years ago and which is no longer in existence. I am not sure that would be a remedy against the more recent mining companies that mined there, because there might be some question raised as to their solvency, if you please. So legally they might be liable, or theoretically they might be liable here or there wherever the dispute arises as to whose fault it was, and it might result in an absolute failure to obtain any relief.

Mr. McCORMICK. Don't this provision require a collection of a tax from every anthracite producer, whether his surface caved in or not, and that relief come out of the general treasury and not from the company causing the damage?

Mr. KELLY. Yes, sir.

Mr. McCORMICK. It does not matter whether the company is extinct under this provision; therefore, you can fix a limit of time as to which this should be operative, ten or fifteen years, or hereafter.

Mr. KELLY. That is, you mean a limit of time?

Mr. McCORMICK. Yes, sir.

Mr. KELLY. Yes, oh, yes, that may be done; I was merely suggesting what seems to me a practical objection to the word "hereafter."

Mr. GORDON. It is intended to give relief to all persons who have heretofore suffered injury?

Mr. KELLY. Yes, sir.

Mr. GORDON. If it does, I do not believe your words embrace it, unless it is clearly intended to be restricted, and I think the language there would be proscriptive as to the cause of the injury. The cause of the injury might be in the past, but the injury should be in the future, as it now reads, which is not what you intend it to be.

Mr. KELLY. Of course, I do not know just how to answer you, Judge Gordon. We have such a peculiar situation that there are a great many very bad cases which happened recently, but yet they have happened heretofore, and are bound to happen hereafter.

Mr. GORDON. Mr. Chairman: I do not object to the "hereafter," I only think that this section does not carry out your idea. I think, that we would get confused, the injury would be in the future, even if the cause may have been in the past; the mining may have been in the past.

Mr. KELLY. In our neighborhood, of course, we are glad if we can get relief from the future troubles, if we have to put up with all our past troubles. At the same time, personally, I feel as though there ought to be some relief for some of the past troubles. It was never our intention, of course, to go back into ancient history, or anything of that kind. This situation is a public situation, and as a public situation has all arisen within the last few years, I would say ten or twelve years, or something of that kind.

Mr. McCORMICK. Have not most of the cases in the past been taken care of, have not the companies taken care of them?

Mr. REED. All under five thousand dollars.

Mr. KELLY. That is a very recent arrangement. They are working under a sort of voluntary arrangement now. Five years ago the man whose property was injured got no relief at all. I want to be careful not to mistate anything. Some companies at all times did give some relief, but some did not, according to the policy of the particular company or the particular men who might be in charge of it; but speaking generally there was no universal relief, that is, no general plan of relief until recently they adopted this voluntary agreement under which they repair properties of less than five thousand dollars in value, which, of course, is a very good arrangement and a considerable element of relief; but at the same time it is pretty hard on the man whose property is worth fifty-one hundred dollars; he gets no relief, and the man whose property is worth forty-nine hundred dollars, he gets almost complete relief.

The CHAIRMAN. The secretary desires to be sure that he has the amendment as it is intended to read.

The SECRETARY. The first amendment as I have the section will read:

> Laws may be enacted providing for the levying and collecting of a special tax on anthracite coal when prepared for market, and appropriations not exceeding the amount of such tax may be made by law for the relief of persons, corporations, associations and municipalities injured or damaged by surface subsidence resulting from past or future mining of anthracite coal.

On the question recurring.

Will the committee agree to the amendment?

It was agreed to.

On the question recurring.

Will the committee agree to the section as amended?

Mr. REED. Mr. Chairman: Before I forget it, the amendment exempting inheritance and income tax and fixing a minimum has been submitted to Judge Fox, and he and I have agreed that this be substituted for the rather rough wording, or the awkward wording that we had, the exception to read "except that an amount of an income or of a decedent's estate below a minimum prescribed by law may be exempted from taxtation." I move this amendment.

Mr. FOX. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question recurring,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE III, SECTION 18-A.

Mr. KELLY. Mr. Chairman: Might I call your attention to the fact that this morning under section 18-A, of article III, under the heading "Certain Appropriations Permitted," the commission postponed the consideration of this section, as I understood it. I might be wrong. I am just calling your attention to it, until we reached this subject we have just debated —

The CHAIRMAN. You are correct, Judge Kelly.

Mr. KELLY. Therefore I suggest we return to that and dispose of it.

On the question recurring.

Will the committee adopt the section as reported?

Mr. KELLY. I move to amend section 18-A, article III, by striking out the word "hereafter" in line 4.

Mr. THORPE. Mr. Chairman: I second the amendment.

The amendment was agreed to.

The CHAIRMAN. While we are considering this section, we may as well clean it up. There are two amendments suggested by the committee on style; one of them is to strike out in lines 4 and 5, the words, "for the relief of persons or municipalities hereafter injured or damaged by surface subsidence resulting from past or future mining of anthracite coal," and inserting "for the relief consequent upon grave public disasters or calamities."

The understanding of the chair is that by striking these words out, in the light of what we have already done, the two sentences would not be in harmony, but the chair's thought is that, notwithstanding this provision that appropriations might be made for relief consequent upon grave public disasters or calamities, it might be a wise thing to put in the constitution.

Mr. KELLY. Mr. Chairman: I move the adoption of that amendment.

Mr. GORDON. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the committee agree to the section as amended?

The CHAIRMAN. There is another amendment suggested, to insert in line 5, the words "for the payment of funds under public control for the assistance of classes of dependent persons." As the chair understands it, that is to take care of the teachers' retirement fund in the main. Is that correct, Mr. Secretary? And the state contribution to widow's pensions, to which there has been some constitutional objection raised.

On the question,

Will the committee agree to the amendment?

Mr. THORPE. Might there be some little light thrown on that word "dependent"? Couldn't that be misconstrued in some cases?

The CHAIRMAN. Would there be a better word, Doctor Thorpe?

Mr. THORPE. I cannot now suggest a synonym, but teachers do not like to be called dependents.

Mr. GORDON. Do I understand that this is intended to meet the case of teachers?

The CHAIRMAN. I think perhaps I was wrong in that. I think it was intended to meet more particularly the mothers' pension situation.

Mr. GORDON. It is comprehensive enough to mean any person who needs something. That is the danger of using general terms for stating things. I think that is an unwise piece of constitutional enactment, "for the assistance of classes of dependent persons." I do not know any children of sorrow or poverty that come within that designation, and our legislature might be very generous.

On the question recurring.

Will the committee agree to the amendment?

It was not agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE IX, SECTION 2.

The committee of the whole proceeded to the consideration of section 2 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

EXEMPTION FROM TAXATION LIMITED.

1 Section 2. Laws may exempt from taxation only public property used for
2 public purposes, places used for religious worship, places of burial not used or
3 held for private profit, and institutions of purely public charity. Private property
4 used for a part or all of the time for educational purposes shall only be exempted
5 if the basic language of instruction is English and if the educational standards
6 are as high as in the public institutions with which it is intended to compete.

NOTE.

Source: (1) Part of article IX, section 1:

"* * * the general assembly may, by general laws, exempt from taxation public property used for public purposes, actual places of religious worship, places of burial not used or held for private or corporate profit, and institutions of purely public charity."

(2) Article IX, section 2:

"All laws exempting property from taxation, other than the property above enumerated, shall be void."

Changes in Substance: Article IX, section 2, in the present constitution, permits exemptions where the property is used for an educational purpose by institutions of purely public charity. The concluding sentence of the section suggested makes it possible for laws to exempt only (a) if the corporation, association or institution using the property for a part or all of the time for educational purposes employs English as "the principal language of instruction," and (b) "if the educational standards are are high as in the public institutions with which it is intended to compete." Your Commission believe that private educational efforts should be discouraged when they tend to prevent persons from acquiring a knowledge of the English language, or give an education inferior to that which they would obtain in the public schools. (Compare article X, section 8-A, as proposed.)

The words "for a part or all of the time" have been used to prevent exemption from taxation being given property used for a school where a foreign language is employed as the principal language of instruction or the standard of instruction is below that of the public schools, on the ground that it is also used for and therefore is a place of religious worship.

Changes in Style: The commission's rules of style have been followed.

The requirement that all exemptions must be by general laws is omitted because covered by article III, section 26-C, clause (n).

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE IX, SECTION 3.

The committee of the whole proceeded to the consideration of section 3 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

TAXATION OF CORPORATIONS.

1 Section 3. The state government shall not surrender or suspend by contract
2 or grant the power to tax corporations or corporate property.

NOTE.

Source: Article IX, section 3:

"The power to tax corporations and corporate property shall not be surrendered or suspended by any contract or grant to which the state shall be a party."

Changes in Substance: None.

Clarifying Amendment: Under the wording of the present constitution, it may be regarded as doubtful whether a municipality can or cannot surrender its power to tax. Under the wording proposed by the Commission, this doubt is removed. The section will apply only to the state government.

Changes in Style: The commission's rules of style have been followed.

Special Note to the commission by the committee on style.

Recommendation of Change in Substance.

Alter to read: "The power to tax shall not be surrendered or suspended by contract or grant."

There is a doubt of the exact meaning of the word "state" in the section in the present constitution. It is probable, but not certain, that it was intended by the drafters of the present section to include contracts and grants by a municipality. The principle that the power to tax should not be surrendered is, it is submitted as applicable to a municipality as to the state government.

In the judgment of the committee there is no reason for distinguishing taxable corporations from taxable individuals for the purposes of this section.

On the question,

Will the committee adopt the section as reported?

The CHAIRMAN. The recommendation of the committee on style is to substitute for the section adopted by the commission. "The power to tax shall not be surrendered or suspended by contract or grant."

Mr. FOX. Mr. Chairman: I move the adoption of the substitute.

Mr. McCORMICK. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE IX, SECTION 4.

The committee of the whole proceeded to the consideration of section 4 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

LIMITATION ON STATE DEBT.

1 Section 4. A debt shall be created by the state government only to supply
2 casual deficiencies of revenue not exceeding one million dollars, to repel invasion,
3 to suppress insurrection, to defend the commonwealth in war, to pay existing
4 debts, to improve and rebuild highways in the state and to acquire land in the
5 state for forest purposes. A debt for highways shall not be incurred in excess
6 of one hundred and fifty million dollars, or for forest purposes in excess of
7 twenty-five million dollars. A debt for highway of forest purposes shall be
8 created only with the consent of two-thirds of each house of the general assembly
9 and with the consent of a majority of the electors of the commonwealth voting
10 on the question.

NOTE.

Source: Article IX, section 4 (amendment of November 5, 1918):

"No debt shall be created by or on behalf of the state, except to supply casual deficiencies of revenue, repel invasion, suppress insurrection, defend the state in war, or to pay existing debt; and the debt created to supply deficiencies in revenue shall never exceed in the aggregate, at any one time, one million dollars: Provided, however, That the general assembly, irrespective of any debt, may authorize the state to issue bonds to the amount of fifty millions of dollars for the purpose of improving and rebuilding the highways of the commonwealth."

Changes in Substance: (1) The amount which can be borrowed for highways is increased from fifty million to one hundred and fifty millions of dollars.

(2) A debt not exceeding twenty-five million dollars may be created for forest purposes.

(3) A bill authorizing a debt to improve and rebuild highways or for forest purposes must be passed by a two-thirds' vote of the members elected to each house and must also receive the consent of a majority of the electors of the commonwealth voting on the question.

Changes in Style: Article IX, section 4 (amendment of November 5, 1918), provides that "No debt shall be created by or on behalf of the state government." We have omitted the words "on behalf of" because a debt of the state government can be created only by an authorized agent of the state government and when created by such agent is created by the state government.

On the question,

Will the committee adopt the section as reported?

Mr. PINCHOT. Mr. Chairman: There is an amendment which I should like to suggest to this clause, and, after I have submitted the amendment, if I have a seconder for it, I should like in line 6, beginning in line 6, to have the amendment read as follows: "or for forset purposes shall not be incurred in excess of tweny-five million dollars. The enactment of this constitution shall be taken to authorize the immediate issuance of those bonds for forest purposes, not in excess of one-eight of such sum, and a like amount annually thereafter for seven years." If I can have a seconder to the amendment, I wil explain its meaning.

The CHAIRMAN. I will second the amendment.

On the question,

Will the committee agree to the amendment?

Mr. PINCHOT. Since the original clause was inserted in the proposed constitution, I discovered that our situation as to lumber is very much worse than I supposed. Instead of cutting only one-third of the state's needs, we were cutting only one-fifth, and for us to delay, assuming for the purpose of argument that this constitution is going to be enacted, for us to delay until the thing can pass through

two successive legislatures and then be submitted to the people before the purchase of land begins under this provision, would, I think, be an extremely unfortunate postponement of the purchase of lands which I think should begin at once. The result of that postponement would, I think, unduly increase the amount it would cost the state. Accordingly I should like to have wording inserted there, whether the wording I have suggested would accomplish the purpose or not, which would remove the necessity of submitting the issuance of bonds for forest purposes to a vote after two successive legislatures had pased on it, after the passage of this constitution itself, authorizing the issuance of those bonds. Moreover, since the total amount would not be needed at one time, after consultation with the attorney general, and I have his consent, I have prepared an amendment to correct the situation, namely, making a certain amount available year after year, which will be easily possible. I find from investigation already made that we can not spend a very much larger sum than three million dollars a year wisely for the purpose of making these purchases. Therefore I would like to provide that one-eighth of this total sum, or approximately three million dollars a year, should be available each year for the issuance of bonds.

Mr. CUYLER. I dislike very much to oppose so meritorious a proposition, especially coming from Mr. Pinchot, but it does seem to me that it is opening the door to a very dangerous precedent in the constitution. It is a legislative matter and not a constitutional one. Appropriations should be made out of the state treasury. If any such provisions as that is made, we ought to be very careful about it, no matter how pressing or how meritorious the case.

The CHAIRMAN. The chair does not understand the amendment to make an appropriation. It provides for the future authorization and issuance of twenty-five million dollars of bonds for the acquisition of forest land, but that the bonds shall not be issued for twenty-five million dollars at one time, but cover a period of eight years, not exceeding one-eighth of the amount every year.

Mr. CUYLER. My impresion is that it goes farther than that.

Mr. PINCHOT. There is an issuance of bonds not exceeding three million dollars a year.

The CHAIRMAN. You would have to get legislation.

Mr. CUYLER. I do not feel that is what Mr. Pinchot has in mind. Unless I am very much mistaken, the adoption of this constitution would carry with it an appropriation of this twenty-five million dollars.

The CHAIRMAN. It would require legislation to do it, but it would not require the vote of the people. I traveled through some of the state forest land, present and contemplated, recently, and if we are going about the state forest business on a proper line, and are going to have state forests spread over a very large portion of the area of the state, I am convinced we have got to get work on it.

Mr. McCORMICK. May I ask Mr. Pinchot, on the practical side, why he wants to divide his twenty-five millions into seven years? If he could get it in two or three years, would it not be better to get control of the money just as soon as he can?

Mr. PINCHOT. My purpose was to get the money as rapidly as I thought the traffic could bear. In other words, it seems to me very much more likely that a graduated appropriation of that sort would

meet the popular approval than to have the twenty-five millions issued at one time and that is about as fast as the money can be properly spent.

Mr. McCORMICK. Could not a bill contain that provision as to expenditure?

Mr. PINCHOT. A bill could contain it, but unless some such provision as this incorporated here, as the attorney general remarked, the whole thing would have to go to the legislature for two consecutive sessions and then be submitted to the people for a vote, and this would obviate that.

Mr. GORDON. I suppose the proposition is defensive on this score. Mr. Pinchot desires to get his twenty-five million dollars without submitting the loan intended to raise this twenty-five million dollars to a vote of the people. That is right, is it not?

The CHAIRMAN. The people would vote on the question. As they adopt the constitution or not, they would approve or disapprove of the issue of bonds of twenty-five million dollars.

Mr. GORDON. Mr. Chairman: He does not desire to have a vote on this bond issue?

The CHAIRMAN. Not separately.

Mr. GORDON. Because if the people adopt this constitution, allowing him to get it without a vote on the bond issue, he would have taken the voice of the people on the subject?

The CHAIRMAN. Yes, sir.

Mr. GORDON. I think that would be equivalent to a vote on the bond issue. I think that is logical.

The CHAIRMAN. Otherwise there is going to be ten years' delay, as I figure it, in starting the purchase of forest land in the way they ought to be purchased.

Mr. McCORMICK. That does not include then the road bond issue?

The CHAIRMAN. No, sir; just the forestry bonds.

Mr. McCORMICK. Why?

The CHAIRMAN. The road bond issues would be voted upon by the people and could not be increased above one hundred and fifty million dollars. They would have to vote on them every time.

Mr. GORDON. I think if Mr. Pinchot develops as a claimant for appropriations in the future as rapidly as he has in the last few months, he will get it very quickly. I also think he is a very good illustration of having a cabinet officer in the government asking for appropriations for his department.

On the question recurring.

Will the committee agree to the amendment?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE IX, SECTION 5.

The committee of the whole proceeded to the consideration of section 5 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

LIMITATION ON STATE LOANS.

1 Section 5. A law authorizing the borrowing of money by the state govern-
2 ment shall specify the purpose of the loan. The money borrowed shall be used
3 only for such purpose.

NOTE.

Source: Article IX, section 5:

"All laws, authorizing the borrowing of money by and on behalf of the state, shall specify the purpose for which the money is to be used, and the money so borrowed shall be used for the purpose specified and no other."

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE IX, SECTION 5-A.

The committee of the whole proceeded to the consideration of section 5-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

STATE SINKING FUND.

1 Section 5-A. To provide for the payment of the debt of the state govern-
2 ment there shall be maintained by law a sinking fund sufficient to pay the
3 accruing interest on such debt, and annually to reduce the principal by a sum
4 not less than three per centum of such principal. The sinking fund shall con-
5 sist of the proceeds of the sale of public works, of the income or proceeds of the
6 sale of stocks owned by the state government, and of the revenue of the state
7 government not required for the ordinary and current expenses of government,
8 together with such other assets as may be prescribed by law.

NOTE.

Source: Article IX, section 11:

"To provide for the payment of the present state debt, and any additional debt contracted as aforesaid, the general assembly shall continue and maintain the sinking fund sufficient to pay the accruing interest on such debt, and annually to reduce the principal thereof by a sum not less than two hundred and fifty thousand dollars; the said sinking fund shall consist of the proceeds of the sales of the public works or any part thereof, and of the income or proceeds of the sale of any stocks owned by the commonwealth, together with other funds and resources that may be designated by law, and shall be increased from time to time by assigning to it any part of the taxes or other revenues of the state not required for the ordinary and current expenses of government; and unless in case of war, invasion or insurrection, no part of the said sinking fund shall be used or applied otherwise than in the extinguishment of the public debt."

Changes in Substance: (1) The requirement in article IX, section 11, of the present constitution that the sinking fund shall be sufficient to pay accruing interest on the debt and reduce the principal by $250,000 has been changed so as to require the reduction of the principal by three per centum annually.

(2) In the present constitution the sinking fund may be used for purposes other than the reduction of the public debt, in case of war, invasion or insurrection. The suggested section omits these exceptions.

Changes in Style: The commission's rules of style have been followed.

Special Note to the commission by the committee on style.

Recommendation of Change in Substance.

Change to read:

The state government shall not incur a debt maturing more than fifty years from its incurrence.

If serial bonds are issued for a debt, the aggregate amount of principal and interest payable in respect to the debt in any year shall not be less than the amount payable in any later year.

If serial bonds are not issued, the state government shall maintain by law a sinking fund sufficient to pay the accruing interest on such a debt and annually to reduce the principal by a sum not less than three per centum of such principal. The money of the sinking fund shall be invested only in the bonds of the United States or of the state government.

The re-wording suggested involves four substantive changes in the section as adopted by the commission:

(1) It limits the date of maturity of a debt of the state government to a period of not more than fifty years.

Your committee believe that this limitation is wise, as the useful life of the average public improvement does not exceed that time. The fifty-year period corresponds to the provision for municipal debts adopted by the commission. (See article XVIII-A, section 23.)

Furthermore, the commission, by providing for a reduction of a debt by three per centum annually, through the operation of the sinking fund, have, in effect, provided for the cancellation of any debt within a shorter period. As we are here recommending that the commission, by further amendment, permit the state government to issue serial bonds, it is necessary to state in the constitution the maximum life which may be given to the longest bond in the series.

(2) It permits the state government to discard the sinking fund method of amortization and adopt the more modern and, your committee believe, the better method of issuing bonds a definite fraction of which shall fall due each year. The Commission itself have adopted a section (article XVIII-A, section 23), which requires this method to be followed by municipalities, unless the municipality is permitted to adopt another method of amortization by an agency created by law. It is inconsistent with this action to retain the government sinking fund method of amortization as the only method which can be adopted by the state government.

(3) The provisions in the present constitution and in the section as adopted by the commission, attempting to direct what the sinking fund shall consist of, are omitted. Amended as to style, the part of the section omitted reads: "The sinking fund shall consist of the proceeds of the sale of public works, of the income or proceeds of the sale of stocks owned by the state government, and of the revenue of the state government not required for the ordinary and current expenses of government, together with such other assets as may be prescribed by law."

It is stated that the sinking fund is to consist of the income or proceeds of the sale of stocks owned by the state government. Is this confined to stocks acquired by purchase by the state government? If it is not, suppose A dies and leaves a specific legacy of designated stocks to the state: Do the income or proceeds of the sale of these stocks have to be paid into the sinking fund? Is it entirely clear that the proceeds of the sale of the stock by an administrator where the estate escheats to the commonwealth do not have to be paid into the sinking fund? If they do have to be paid into the sinking fund, there is a conflict between the provisions of this section and between article X, section 7-A, which requires that all money derived from escheated estates shall become part of the state school fund.

In view of the requirement that the sinking fund shall be increased from time to time, assigning to it any part of the taxes or other revenue of the state government not required for the "ordinary and current expenses of government," is it entirely clear that the proceeds of a special tax levied for an extraordinary purpose—as to build a bridge across the Delaware—would not have to be paid into the sinking fund as not being an ordinary and current expense? If the words "ordinary and current" are to have any meaning, what is their meaning?—except an expression of the principle that so long as there are state debts to be paid no revenue can be raised for what the supreme court might regard as an extraordinary purpose.

Even if the intent of the provisions could be made plain, your committee do not regard it as desirable that the constitution should attempt to designate the nature of the assets of the sinking fund.

(4) The commitee have restored the provisions of the present constitution requiring that the sinking fund shall be invested only in the bonds of the United States or of the state government.

This provision is found in article IX, section 12, of the present constitution, which reads:

> "The moneys of the state, over and above the necessary reserve, shall be used in the payment of the debt of the state, either directly or through the sinking fund, and the moneys of the sinking fund shall never be invested in or loaned upon the security of anything, except the bonds of the United States, or of this state."

The commission struck out all of section 12. From the record of the proceedings of the commission, the reason for the action is the conflict between the first part of the section and the provisions of article IX, section 11, of the present constitution. This reason, however, does not apply to the provision guarding the investment of the moneys in the sinking fund which, we submit, are important and should be retained.

On the question,

Will the committee adopt the section as reported?

The CHAIRMAN. The recommendation of the committee on style is to change this section so that it will read as recommended by the committee, and as this is an important provision with reference to the state finances. I think that these sections might be studied for a moment, the section as reported and as it stands and the recommendations of the committee.

Mr. GORDON. May I ask the secretary of the committee to make a statement of the purpose of the change and its effect?

The CHAIRMAN. The secretary will comply.

The SECRETARY. As I understand it, the commission is dealing with the question of the issue of bonds by municipalities came to the conclusion and passed an article which provided for the issuing of serial bonds instead of sinking-fund bonds, which is the existing method, the reason of that being, as I understood it, that the serial bond method, which is now the method in several constitutions, was regarded as a more efficient way of amortizing the public debt. When, therefore, the committee on style came to the provision for the issuing of bonds by the state government, they determined to recommend that the state government in the issuing of its bonds the same serial-bond method, limiting the issue to fifty years, and making the other provisions set forth in the recommendation, so that there should not be one set of provisions for the amortization of state bonds and a wholly different and much more modern provision for the amortization of the debts of the municipalities.

Mr. GORDON. Mr. Chairman: I do not think that that is a good reason, the reason that it is not desired to have a different method for amortization of the state debts from that which obtains in the municipalities. If the method which obtains in municipalities is not the best, I have no opinion on the question, and I should very much like to hear from Mr. Cuyler on it, what he thinks of this method.

Mr. CUYLER. Mr. Chairman: I think it is a very wise suggestion by the committee on style. I think it meets more modern financing in making investments, not only as to private issues, but in public issues all over the country. I think it is very wise.

Mr. McCORMICK. Do you think that fifty years is rather long for a road bond, for instance?

Mr. CUYLER. No, I do not think it is; I think it would put the selling of those bonds on a better basis.

Mr. McCORMICK. In municipalities, I think our bonds were for twenty years.

Mr. CUYLER. The time has passed for short-term securities. The tide is getting the other way. The investors, both private and banking institutions, are now seeking long-term bonds.

Mr. McCORMICK. That may be a better thing for the investor. What do you think of the lender?

Mr. CUYLER. I think it is better for the lender, and that the state can sell at a better advantage.

On the question,

Will the committee adopt the substitute as recommended by the committee on style?

It was adopted.

ARTICLE IX, SECTION 6.

The committee of the whole proceeded to the consideration of section 6 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

STATE CREDIT NOT TO BE PLEDGED.

1 Section 6. The state government shall not pledge or lend its credit to an
2 individual, corporation or association and shall not become a stockholder or an
3 owner in a corporation or association.

NOTE.

Source: Article IX, section 6:

"The credit of the commonwealth shall not be pledged or loaned to any individual, company, corporation or association, nor shall the commonwealth become a joint owner or stockholder in any company, asociation or corporation."

Changes in Substance: None.

Clarifying Amendments: Under the wording of article IX, section 6, in the present constitution, prohibiting the commonwealth from becoming a "joint owner or stockholder" it is not entirely clear whether the word "joint" is intended to qualify the word "owner" and the word "stockholder." If it does, it would follow that the state government could become the sole owner of all the stock of a corporation but could not become the owner of part of the stock and thus share responsibility with private owners. We believe the re-wording suggested, which, by omitting the word "joint," makes it clear that the state government shall not own the stock or other evidence of ownership of a corporation or an incorporated association, expresses a fundamental rule which should not be subject to possible qualifications.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE IX, SECTION 9.

The committee of the whole proceeded to the consideration of section 9 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

MUNICIPAL DEBT NOT TO BE ASSUMED BY STATE. EXCEPTIONS.

1 Section 9. The state government shall not assume the debt of a municipality
2 unless contracted to enable the commonwealth to repel invasion, to suppress
3 insurrection or to defend itself in war.

NOTE.

Source: Article IX, section 9:

"The commonwealth shall not assume the debt, or any part thereof, of any city, county, borough or township, unless such debt shall have been contracted to enable the state to repel invasion, suppress domestic insurrection, defend itself in time of war, or to assist the state in the discharge of any portion of its present indebtedness."

Changes in Substance: The use of the word "municipality" in the proposed section, instead of "city, county, borough or township," applies the principle enumerated in the section to any municipality, as "municipality" is defined in article XVIII-A, section 1.

Changes in Style: Article IX, section 9, provides that the state may assume the debt of a "city, county, borough or township" when the debt has been contracted "to assist the state in the discharge of any portion of its present indebtedness." This has been omitted as obsolete. No part of the present indebtedness of any municipality has been contracted for such a purpose.

The commission's rules of style have been followed.

On the question,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE IX, SECTION 13.

The committee of the whole proceeded to the consideration of section 13 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

RESERVE FUNDS LIMITED. MONTHLY STATEMENTS OF RESERVE FUNDS.

1 Section 13. The money held as necessary reserve by the state government
2 shall be limited by law to the amount required for current expenses and shall
3 be secured and kept as prescribed by law. Monthly statements shall be pub-
4 lished showing the amount of such money, where it is deposited, and how it is
5 secured.

NOTE.

Source: Article IX, section 13:

"The moneys held as necessary reserve shall be limited by law to the amount required for current expenses, and shall be secured and kept as may be provided by law. Monthly statements shall be published showing the amount of such moneys, where the same are deposited, and how secured."

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

Special Note to the commission by the committee on style.

Recommendation of Change in Substance.

Insert, in line 4, after "published," "by the state treasurer."

This amendment is suggested by the committee so that the constitution will not impose a duty without naming the person who is to discharge it.

On the question,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE IX, SECTION 13-A.

The committee of the whole proceeded to the consideration of section 13-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

PAYING OUT PUBLIC MONEY.

1 Section 13-A. Money shall be paid out of the state treasury only on appro-
2 priations made by law and on warrant by the proper officer in pursuance thereof."

NOTE.

Source: Article III, section 16:

"No money shall be paid out of the treasury, except upon appropriations made by law, and on warrant by the proper officer in pursuance thereof."

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE IX, SECTION 14.

The committee of the whole proceeded to the consideration of section 14 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

PUNISHMENT FOR MISUSE OF STATE MONEYS.

1 Section 14. An officer of the state government or a member of the general
2 assembly who shall make or attempt to make a profit out of the money of the
3 state government or shall use it for an unauthorized purpose, shall be guilty of
4 a misdemeanor and shall be punished as prescribed by law.

NOTE.

Source: Article IX, section 14:

"The making of profit out of the public moneys or using the same for any purpose not authorized by law by any officer of the state, or member or officer of the general assembly, shall be a misdemeanor and shall be punished as may be provided by law, * * *"

Changes in Substance: None.

Clarifying Amendments: (1) Under the present constitution, it is not clear whether "public moneys" include moneys belonging to a municipality or only moneys of the state government. Again it is not clear whether "officer of the state" includes any officer who is not an officer of the state government. In view of the fact that, in the present constitution, this section follows a section which evidently deals exclusively with money of the state government, it is probably that the drafters of the section intended to confine its provisions to officers of the state government misusing state money. As proposed, the section adopts this construction.

(2) It is made clear that an attempt to make a profit is covered by the section.

Changes in Style: The commission's rules of style have been followed.

The last part of article IX, section 14, referring to a disqualification for holding office has been transferred to article XII, section 3-C.

Special Note to the commission by the committee on style.

Recommendation of Change in Substance.

Insert, in line 1, after "officer," "or an employe."

Insert, in line 1, after "government," "or of a municipality."

Insert, in line 3, after "government," "or of a municipality."

Your committee believe that if the provisions of this section are regarded as proper for inclusion in the constitution, they should be expanded to include municipal officers and all employes of the state or of a municipal government.

On the question,

Will the committee adopt the section as reported?

The CHAIRMAN. The recommendations of the committee on style are to insert in line one after "officers" or an employe;" insert in line one after "government" "or of a municipality," and insert in line three after "government" "or of a municipality."

On the question,

Will the committee agree to the amendment?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE X, SECTION 1-A.

The committee of the whole proceeded to the consideration of section 1-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

EDUCATIONAL SYSTEM OF THE COMMONWEALTH.

Section 1-A. Laws shall be enacted providing for the operation and maintenance of an educational system for the commonwealth. This shall include free elementary, secondary and vocational education for all children of the commonwealth and free mental and vocational education for persons mentally or physically handicapped, free education in American citizenship for adults, schools for the training of teachers, public libraries, one or more institutions of higher learning and such other educational institutions and agencies as may be wise and necessary for the improvement of the citizenship of the commonwealth.

NOTE.

Source: Article X, section 1:

"The general assembly shall provide for the maintenance and support of a thorough and efficient system of public schools, wherein all the children of this commonwealth above the age of six years may be educated, and shall appropriate at least one million dollars each year for that purpose."

Changes in Substance: (1) Elimination of the reference to "six years" as being the age at which the commonwealth becomes responsible for the child's education. Full responsibility for a child's education may make desirable instruction before the child reaches six years.

(2) The imposition of an obligation to provide:

(a) Free elementary, secondary and vocational education for all children.

(b) Free mental and vocational training for persons mentally or physically handicapped.

(c) Free education for adults in American citizenship.

(d) Schools for the training of teachers.

(e) Public libraries.

(f) One or more institutions of higher learning.

(g) Other educational institutions and agencies that may be wise and necessary for the improvement of the citizenship of the commonwealth.

(3) The omission of a provision for the annual appropriation by the state government of a specific sum of money.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

Mr. REED. Mr. Chairman: May I inquire whether it is your expectation to convene this evening, or to adjourn now or within the next few minutes or what? Do you mean to finish everything that is here?

The CHAIRMAN. No, sir: It would not be possible to finish everything; it could not be done.

Mr. REED. It seems that this is a very important section and should have a lot of consideration.

The CHAIRMAN. If it is the desire to adjourn at this time or take a recess, the chair will entertain a motion to adjourn or recess until a time that the commission may desire.

Mr. REED. Do you wish to have an evening session?

The CHAIRMAN. This is for the commission to say. We could speed our labors here and very likely get away tomorrow if we have an evening session.

RECESS.

Mr. McCORMICK. Mr. Chairman: I move that we take a recess until eight o'clock this evening.

Mr. REED. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 5.15 o'clock P. M., the committee of the whole took a recess until 8 o'clock this evening.

AFTER RECESS.

The committee of the whole reconvened at 8 o'clock P. M.

The Chairman, William I. Schaffer, in the chair.

The CHAIRMAN. The hour fixed for the reconvening of the committee having arrived, the committee will be in order.

ARTICLE X, SECTION 1-A.

The committee of the whole resumed the consideration of section 1-A as reported by the committee on style.

The secretary read the section as follows:

EDUCATIONAL SYSTEM OF THE COMMONWEALTH.

1 Section 1-A. Laws shall be enacted providing for the operation and main-
2 tenance of an educational system for the commonwealth. This shall include
3 free elementary, secondary and vocational education for all children of the
4 commonwealth and free mental and vocational education for persons mentally
5 or physically handicapped, free education in American citizenship for adults,
6 schools for the training of teachers, public libraries, one or more institutions of
7 higher learning and such other educational institutions and agencies as may be
8 wise and necessary for the improvement of the citizenship of the commonwealth.

On the question,

Will the committee adopt the section as reported?

Mr. GORDON. Mr. Chairman: I would like to ask for the reading of the section adopted by the commission, and for which this seems to be a substitute.

The CHAIRMAN. The secretary will please read.

The secretary read the section as follows:

> The general assembly shall provide for the operation and maintenance for an educational system for the commonwealth. This shall include free elementary, secondary and vocational education for all children of the commonwealth and for persons mentally and physically handicapped, free education for adults in American citizenship, schools for the training of teachers, a system of public libraries, one or more universities and such other educational institutions and agencies as it may determine to be wise and necessary for the improvement of the citizenship of the commonwealth.

Mr. GORDON. Mr. Chairman: In a hurried reading, I do not have the section here, there was one thing which I can not account for. Section 1-A, the educational system of the commonwealth, "one or more institutions of higher learning." The committee has reported that. The commission said, "one or more universities," I believe. Is not that a fact? I would like to know why that change was made by the committee, and what its effect is intended to be.

The CHAIRMAN. Personally I can not answer that. Maybe the secretary can.

Mr. CUYLER. I should say this was better. We know there are many institutions in this country that are in a sense universities, and I would think, Judge Gordon, it would be better to designate them higher institutions of learning rather than universities. A university is realy something that requires an enormous cost to support.

The CHAIRMAN. One of the reasons, I think, that actuated the committee was that persons connected with State College, or with the alumni of State College, thought that this was a discrimination against State College, which is a state institution, but a college and not a university, and there is no provision made in the section that would take care of it.

Mr. GORDON. Mr. Chairman: I suppose that it is rather difficult to define what a university is. Dr. Thorpe can define it if any one could; but popularly, for the purpose of this discussion, the university is an institution of higher education in which all the arts and sciences are taught, not merely the modern classical education or academic education, so called, but medicine, finance, economics, and possibly dentistry; but a university is the most comprehensive form of higher education or learning, and I think the commission when it adopted that language, intended that very thing. I think it intended to have at least two universities where those who in the pursuit of higher education in any line of science or art, as well as an academic education, could get it. This substitution of "higher institutions of learning," I forget the exact language, but "institutions of higher learning" would admit of much in relation to our institutions. I suppose our high schools are institutions of higher learning. The Philadelphia high school teaches the ordinary langauges taught in the colleges, Greek, Latin and French, I think they did teach German and Spanish, the higher mathematics, ancient history, and what is commonly taught in the ordinary colleges. These are higher institutions of learning that would probably meet this constitutional requirement. But I am sure the intention of this commission, when it adopted the language "one or more universities," was to have at least two universities. It was discussed here, and some gentlemen wanted to make the University of Pennsylvania the university for the eastern part of the state and the University of Pittsburgh for the western end of the state. I did not concur in that method, because if there was going to be a university for the people I wanted it to be a real type of institution in every sense, and that rather prevailed, I think, with the commission; but anyhow they wanted two universities. Why this committee should strike out that idea and put it simply "institutions of higher learning" and change it in relation to the grade of schools, I do not know. I think it was beyond their province, I think it was injecting their own personal ideas into the finished work of the commission.

Mr. THORPE. Mr. Chairman: As an obscure member of the committee, I am supposed to support its work, but I do not sympathize with the words "institutions of higher learning." I sympathize rather with what Judge Gordon said, but not with what Judge Gordon means. An institution of learning is a generic term. There are forty-four institutions of higher learning in Pennsylvania, and

if we are going to thrust a responsibility upon the legislature to make these appropriations to any or all of these to equip the boys, say so. The idea, it seems to me, Mr. Chairman, was to secure in Pennsylvania an opportunity for the very highest possible learning of which the human mind is capable under present conditions. Mr. Philip S. White, who, in his autobiography speaks of Mr. Cornell, says that Mr. Cornell was in the habit of saying that he would like to found an institution where any person could study any subject, and I think that is on the seal of the university at the present time. I think the words which are reported by the committee are very objectionable for this reason; first, the history of the constitutions of Pennsylvania is against them. You remember, sir, that there was not "one or more universities," in any one of the earlier constitutions. In the beginning it said "seminaries of learning" in one of the earlier constitutions. Now, when this came up in committee, there are several members who will correct me if I am in error, the question was how to state that idea of the State Colleges and the University of Pittsburgh and the University of Pennsylvania as types of spirit, and types not merely of corporations, and our friend who is absent on account of sickness, Mr. Alter, if I remember correctly, thought that the expression was not inclusive of State College, and therefore it would possibly be a discrimmination against State College. Now, whether State College is a state institution or not, is a matter of debate; but popularly speaking it is, and therefore this phrase was used. Mr. Pepper suggested this phrase, if I recall it correctly, as it would be a sort of compromise between a college or a university; but to make it possible for the legislatures of Pennsylvania in future times to make appropriations as they thought proper for the culture of the people of Pennsylvania in institutions of learning or of a higher grade, that was in the minds of all, and the phrase was as there used. The meaning was "two or more universities." At least I left Pocono with that understanding. The committee in using the word thought it was a synonym, and if it is not we ought to strike it out. I think the original language of the commission is preferable, the original language that used the term "university," and we should keep that in the constitution.

Now, this word "university," as I understand it, Mr. Chairman, never came into existence until the university of Paris was founded. I do not want to be considered academic at all, but it occurred to me, if my memory is right, that Peter Lombard long ago used that term first. He had a little book which was used for centuries and centuries, his so-called "sentences," though they were "principles." They were to be used in a university which was for the purpose of bringing together the young men who were studying for the priesthood that they should study all phases of revealed and natural religion. Peter Lombard was one of the first to use that phrase, and that is a sort of place where things can be done in their community. That was the original conception. Then you have the later conception of our practical men, as did Cornell, where any person can study any subject completely. That was the idea, I think, here in Pennsylvania, one of the greatest commonwealths in the union. The idea was to make provision in a generic way for the existence of such institutions of higher learning. The central high school in Pennsylvania has more in its curriculum than Harvard

had sixty years ago. There is more taught in the hight schools in various parts of Pennsylvania than in the colleges that some of us perhaps went to. I think that that phrase is somewhat irrelevant here, and I think we had better use the accepted term of the earlier fundamental law of the state.

Mr. FISHER. Mr. Chairman: I happened to be a member of the committee on style when this matter was discussed by the committee. It is unfortunate that Mr. Alter and Mr. Pepper are not here, because they are responsible for the wording. The change grew out of the opposition, so it was stated by Mr. Alter, of a member of the board of trustees of State College to the term "university," because State College is not an institution that could be classed as a university, and they wanted to maintain their status as a state institution. Now, the rest of the committee yielded rather to Mr. Alter, and the phrasing was provided by Mr. Pepper. Personally I am not wedded to the change. I like the university idea.

Judge Gordon and Dr. Thorpe have defined what we all conceive to be a university, a place where all sorts of knowledge may be taught to those seeking knowledge. That is broad and comprehensive. But it was thought by the committee that if the words, "institutions of higher learning" were employed here that the legislature then could determine the scope of the institutions. If we use the term "university" here, of course, it would have a more or less binding effect on the legislature, and yet I assume that the legislature, in this case, may have something to say in the way of defining what institutions constitute universities. But if it is thought well to strike this out in the absence of Mr. Alter and Mr. Pepper, I personally have no objection to it. I do think if they art going to be here, they ought to be allowed to express themselves.

The CHAIRMAN. Mr. Alter can not be here.

Mr. GORDON. It would seem that this committee did what it has no right to do. What it did was not to deal with the style of what the commission has done, but it changed its ideas and changed the language of the section not as a matter of style, but changed it in order to incorporate an entirely different idea in the article, irrespective of what this commission might have done at the time of adopting it. We ought to restore this section to what it was when the commission passed it. Mrs. Malaprop objected to having attacks made on her parts of speech. If this committee had simply attacked the parts of speech in this section, I would not have had the objection of Mrs. Malaprop. This is something more than a change in style; it is a change of substance in the language of the commission, and in this case arrogantly made. I think this body should restore the section for that reason.

Mr. FISHER. I do not want to constitute myself as a defender of the committee on style, but it certainly was not their intention to be arrogant. As I recall the instructions, they included the power to make suggestions for changing the substance. It was intended by the committee that this should be merely a suggestion. Now, if it is not in that form here, it has not been reported properly by the printer in the report. There was no intention by the committee to exercise any arbitrary authority or opinion, because we had none, except recommendations in the way of suggestions.

The CHAIRMAN. If a motion is made to make the suggested change, I will put it before the commission.

Mr. GORDON. Mr. Chairman: I move that the section be restored to what it was when adopted by the commission.

Mr. REED. Mr. Chairman: I second the motion.

The motion was agreed to.

Mr. PINCHOT. May I ask a question of Judge Gordon?

The CHAIRMAN. Yes, sir.

Mr. PINCHOT. Whether it was his intention to prevent the adoption of other amendments beside the matter of the university, which had been incorporated in the draft by the committee on style?

The CHAIRMAN. No sir; any amendment can be offered. You mean can amendments be offered now?

Mr. PINCHOT. I find under the notes to section 1-A that the committee enumerated the things which this committee on style proposed to accomplish by its wording which differed from that, differs very much from the meaning of the section as adopted by the commission.

The CHAIRMAN. That is only a synopsis of what was adopted by the commission.

Mr. PINCHOT. Mr. Chairman: In all respect to the chairman, sir,—

The CHAIRMAN. I asked the secretary, and he so informed me.

Mr. PINCHOT. It says "Elimination of the reference to 'six years' as being the age at which the commonwealth becomes responsible for the child's education. Full responsibility for a child's education may make desirable instruction before the child reaches six years. (2) The imposition of an obligation to provide" various things.

The CHAIRMAN. The secretary will explain.

The SECRETARY. The changes under each of these sections throughout this draft marked "Changes in Substance" are the changes in substance from the constitution as it now is. They do not refer to the changes in substance recommended by the committee. When the committee believed that it was submitting a change in substance, it mentioned it at the end of the section in the notes thereto under a special note, "Special Note to the Commission by the Committee on Style," and "Recommendation of Change in Substance." Therefore the note appended to section 1-A, "Elimination of Reference to 'six years'" refer to the present constitution, which says: "The general assembly shall provide" for a public school system which shall take care of the free education of children over six years. And so with all the other changes to which we call attention under these notes. They have nothing to do with the changes suggested by the committee.

Mr. PINCHOT. May I ask this question, then, Mr. Chairman, whether the motion just adopted of Judge Gordon referred to section 1-A as it stood, which said, "one or more institutions of higher learning," or is it to be, "one or more universities of higher learning?"

The SECRETARY. The motion of Judge Gordon restores the section to its wording as adopted by this commission. It makes no change in substance from that recommended by the commission, unless the commission believes that there was inadvertantly a change in substance in changing the words "institutions of higher learning" and substituting those words for the words, "one or more universities." It makes a change in style. The only other change, correctional change, is that instead of "laws shall be enacted," which is the

usual style throughout, in the draft as now submitted it substitutes "The general assembly shall enact." Then, except for the changes between "institutions of higher learning" and "universities," it leaves the substance of section 1-A just as it is, and as printed in the report.

The CHAIRMAN. The secretary will read what was adopted by the commission; then we can see exactly where we are, and that which was adopted by the vote of the commission has been restored.

The SECRETARY. The change in the first line as reported by the committee reads, "Laws shall be enacted providing"; as adopted recently by the commission it read, "The general assembly shall provide for." I think except for the change of "universities" there is no change. "The operation and maintenance of an educational system for the commonwealth. This shall include free elementary, secondary and vocational education for all children of the commonwealth and for persons mentally and physically handicapped, free education for adults in American citizenship, schools for the training of teachers, a system of public libraries, one or more universities and such other educational institutions and agencies as it may determine to be wise and necessary for the improvement of the citizenship of the commonwealth."

The CHAIRMAN. That has been adopted and restored by the action of the committee just taken.

Mr. GORDON. May I say a word, Mr. Chairman? You have said that amendments of any character can be offered in considering this report. I had not thought so. I had supposed it would be merely a report of the committee on style, and it would be received, and that report, so far as it made changes in style or recommendations, would be considered, and, as the membership is limited here this evening, I shall not offer an amendment to this section, which I shall do hereafter. I would like to call the attention of those who are here to what I regard as a fundamental error in this section, and one which I am afraid has been deliberately made. Under the constitution of 1874, reading as follows: "The general assembly shall provide for the maintenance and support of a thorough and efficient system of public schools, wherein the children of this commonwealth," and so on, shall be educated. Now, the words "public schools" are not used in this section from beginning to end. The phraseology is dubious, so dubious that it would admit of all sorts of devices for education outside of public schools. Let me read it: "Laws shall be enacted providing for the operation and maintenance of an educational system for the commonwealth." Now, I believe, that phraseology was deliberately changed. It was adopted in order that some time in the future that might be done which, when it was endeavored to be done in this commission by a direct amendment, failed of adoption, and that is the incorporation into the public school system of private institutions of learning. "Laws shall be provided providing for the operation and maintenance of an educational system for the commonwealth. This shall include free elementary, secondary and vocational education for all children of the commonwealth, and free mental and vocational educations for persons mentally or physically handicapped, free education in American citizenship for adults, schools for the training of teachers, public libraries, one or more institutions of higher learning"—that is now universities—"and such other institutions and agencies as may be wise and necessary for the improve-

ment of citizenship of the commonwealth." Now, there is not a word in that section as it stands which requires that the institutions where the children and adults of the commonwealth are to be educated are to be public schools. They might be private institutions, or any educational institution or agency which the legislature may choose to adopt. At a later stage in the deliberations of this commission I shall offer some amendment intended to make this section a declaration in favor of a public school system, an indubitable public school system, and one which will not permit of the incorporation into the educational system of any private institution of learning.

ARTICLE X, SECTION 3.

The committee of the whole proceeded to the consideration of section 3 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

SECTION 3. WOMEN ELIGIBLE AS SCHOOL OFFICERS.

NOTE.

Omitted.

In the present constitution this section reads:

"Women of twenty-one years of age and upwards, shall be eligible to any office of control or management under the school laws of this state."

"This section has been omitted because its provisions are covered by article 1, section 5-A, as proposed, which provide that "The right * * * to hold office * * * in the commonwealth shall not be abridged on account of * * * sex * * *"

On the question,

Will the committee adopt the report of the committee on style to omit this section?

Mr. REED. Mr. Chairman: That was stricken out?

The CHAIRMAN. Yes, sir.

On the question recurring,

Will the committee adopt the report of the committee on style to omit this section?

It was adopted.

ARTICLE X, SECTION 3-A.

The committee of the whole proceeded to the consideration of section 3-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

STATE COUNCIL OF EDUCATION.

1 Section 3-A. There shall be a state council of education consisting of citizens
2 of the commonwealth appointed by the governor as prescribed by law. The
3 state council of education shall choose the state commissioner of education, who
4 shall be its chief executive officer. It shall have other powers and duties as
5 prescribed by law.

NOTE.

Source: This is entirely new matter.

Special Note to the commission by the committee on style.

This is a combination of sections 3-A and 4-A as adopted by the Commission.

The committees's rules of style have been followed.

Recommendation of Change in Substance.

Change to read:

Laws shall be enacted providing for a state council of education appointed by the governor. The council shall have the powers and duties prescribed by law. Its chief executive officer shall be the commissioner of education.

The re-wording suggested carries out the change recommended in article IV, section 1, vesting in the governor the right to appoint the commissioner of education. Your committee believe that all the principal executive officers of the state government, except those acting as a check on the expenditure of money, as the auditor general, should be appointed by the governor. Only by vesting the governor with this power can he justly be held responsible for defects in administration.

On the question,

Will the committee adopt the section as reported?

The CHAIRMAN. In the light of what we have already done, this section will require amendment. There is an amendment recommended by the committee in the notes appended to the section, proposing a section in lieu of this section.

Mr. REED. If you will turn to the notes appended to section 8 of article IV, "Appointing Power," the recommendation of the committee was to insert after line 3, "and a commissioner of education," which was intended to give the governor the power to appoint him. I would like to ask whether that was done or not.

The CHAIRMAN. Yes, sir.

Mr. McCORMICK. The governor appoints the commissioner of education.

Mr. REED. Mr. McCormick says it was done.

The CHAIRMAN. Yes, sir. The governor appoints the commissioner of education. That has been taken care of in the section which will be offered for this appointing power section. It will be taken care of there.

Mr. REED. That has not been done then.

The CHAIRMAN. That has not been actually done.

Mr. REED. That is what I supposed.

Mr. McCORMICK. In the section on "Executive Power," section 1 of article IV it says, "The executive power of the commonwealth shall be vested in a governor, a lieutenant governor, a secretary of the commonwealth, an attorney general, an auditor general, a state treasurer, a secretary of internal affairs, a commissioner of education."

Mr. REED. But it does not say who is to appoint him.

Mr. McCORMICK. But it does give the appointment.

The CHAIRMAN. It does not give specifically to the governor the power of appointing him, but it will be taken care of in the section that will be brought to the attention of the commission relating to the appointing power.

Tht CHAIRMAN. The question is on the adoption of the recommendation of the committee for the substitution of a new section in lieu of section 3-A.

On the question,

Will the committee agree to the substitute?

It was agreed to.

ARTICLE X, SECTION 5-A.

The committee of the whole proceeded to the consideration of section 5-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

SUPPORT OF EDUCATIONAL SYSTEM.

1 Section 5-A. Provision shall be made by law for the effective support of the
2 educational system of the commonwealth.

NOTE.

Source: This is entirely new matter.

Special Note to the commission by the committee on style.

As adopted by the commission this section read as follows:

"Adequate provision shall be made by law for the effective and equitable support of the educational system of the commonwealth."

We have omitted the word "adequate" because it adds nothing to the word "effective." We have omitted the words "and equitable." Our understanding of the meaning intended to be conveyed by the word "equitable" is that school districts where the per capita wealth is low shall receive a greater percentage of help from the state government than those districts in which the per capita wealth is high. We doubt whether the word "equitable" conveys this meaning, or, indeed, whether the meaning can be clearly conveyed except by greatly increasing the length of the section and over-emphasizing the thought which led to the use of the word "equitable" by its draftsman.

On the question,

Will the committee adopt the section as reported?

Mr. REED. May we have the original read?

The SECRETARY. As adopted by the commission, this section reads:

No money raised for the support of the educational system of the commonwealth, or any part of said system, shall be appropriated to or used for the support of any sectarian school or institution.

Mr. REED. But that is not the section. It is the section before that.

The SECRETARY. As adopted by the commission section 5-A reads:

It shall be the duty of the general assembly by appropriation or through general or special forms of taxation to make adequate provision for the effective and equitable support of the educational system of the commonwealth.

Mr. REED. Now, which is correct? Under section 5-A you have a different provision that you say was adopted; which is which?

The SECRETARY. The last that was read is correct. This thing arose in this way. As originally adopted by the commission and as recommended by the committee on style, it is found in the notes under section 5-A. They subsequently reconsidered it and suggested the wording which is the section as reported out by the committee on style as section 5-A, with the explanation of the changes as found in the notes appended to that section.

Mr. REED. Then, as I understand, Mr. Chairman, what we are to consider is whether the action of the committee is preferable to that which the secretary read, as found in article X, section 5-A, the original action of the commission. Now, will you not read that again, Mr. Secretary?

The SECRETARY. Section 5-A is as follows:

It shall be the duty of the general assembly by appropriation and through general or special forms of taxation to make adequate provision for the effective and equitable support of the educational system of the commonwealth.

Mr. REED. Mr. Chairman: I would move to substitute that in place of the section as reported by the committee on style. I think it is better.

The CHAIRMAN. That section as heretofore adopted by the commission?

Mr. REED. It may not be more effective legally, but it has more of a moral weight.

Mr. TYSON. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the substitute?

Mr. FOX. Mr. Chairman: It appears to me that there is some force in the suggestion made by Judge Gordon as to the omission of those things that relate to the public school system, and possibly we can cure that defect by inserting some reference to it in this other section. My suggestion would be that it read: "Adequate provision should be made by law for the effective and equitable support of a public school system of the commonwealth as well as for the educational system hereinbefore referred to."

Mr. REED. That will work in with this just as well.

The CHAIRMAN. Is that suggestion accepted by Judge Reed?

Mr. REED. Is it an amendment to this?

The CHAIRMAN. It is an amendment to the section that you read.

Mr. KELLY. It is a matter purely of style and only of style, and not a matter of substance at all. Are we going to depart now from the fundamental rules of style recommended by the committee on style? In other words, this language is, "It shall be the duty of the general assembly" instead of "Provision shall be made by law." "Provision shall be made by law" is a universal way of expressing the same thought, and these gentlemen who want to substitute the original section 5-A—would it interfere with that thought at all if that matter of style would only be adhered to? Do I make myself clear?

The CHAIRMAN. Is the suggestion accepted by Judge Reed?

Mr. REED. No, not in its entirety. I do not object to starting that way. I would like to ask Judge Kelly what becomes of the words "general or special forms of taxation."

Mr. KELLY. If it were permitted, I would say, "Provision shall be made by law."

Mr. REED. By appropriation?

Mr. KELLY. By "appropriation or through general," and so forth.

Mr. REED. That is all right.

On the question recurring,

Will the committee agree to the substitute?

It was agreed to.

ARTICLE X, SECTION 6-A.

The committee of the whole proceeded to the consideration of section 6-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

APPROPRIATIONS TO SECTARIAN SCHOOLS AND INSTITUTIONS.

1 Section 6-A. Money raised for the support of the educational system of the
2 commonwealth shall not be appropriated to or used for the support of any sec-
3 tarian school or institution."

NOTE.

Source: Article X, section 2:

"No money raised for the support of the public schools of the commonwealth shall be appropriated to or used for the support of any sectarian school."

Changes in Substance: The principle set forth in the present constitution as applicable to money raised for the support of the public schools is extended to cover money raised for the support of the educational system of the commonwealth. That system is described in article X, section 1-A.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

Mr. GORDON. I move that the insertion at the end of the first line after the word "the," "public schools," so that the section will read, "Money raised for the support of the public schools and the educational system of the commonwealth shall not be appropriated to or used for the support of any sectarion school or institution." That is in conformity with the last amendment.

Mr. FOX. Mr. Chairman: I second the amendment.

On the question,

Will the committee agree to the amendment?

Mr. THORPE. Mr. Chairman: Is "the educational system of the commonwealth" different from the "the public schools?"

Mr. GORDON. I do not know.

Mr. McCORMICK. Is a university a public school?

On the question recurring,

Will the committee agree to the amendment?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE X, SECTION 7-A.

The committee of the whole proceeded to the consideration of section 7-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

SCHOOL FUND.

1 Section 7-A. The net receipts from state forest reservations, unclaimed funds
2 derived by the commonwealth either by escheat or otherwise, and money or prop-
3 erty designated for the purpose and derived from any source shall constitute the
4 state school fund to be used only for the benefit of the educational system of the
5 commonwealth in such manner as may be prescribed by law.

NOTE.

Source: This is entirely new matter.

Special Note to the commission by the committee on style.

As adopted by the commission this section read as follows:

"All funds derived from receipts of state forest reservations, from escheated estates in the commonwealth, and from all other property or money which shall in any way accrue, whether by act of assembly, devise, gift, or otherwise, and any other funds as may be provided by act of assembly, shall be maintained in perpetuity and designated as the state school fund of Pennsylvania."

(1) It is not clear whether the capital of the fund could be used to improve and maintain the educational system, or only the interest of the fund. We believe the general assembly should be free to determine this question.

(2) The expression "which shall in any way accrue" is vague. "Accrue" to what? to the fund? If so, the words are unnecessary, as a gift to a fund pledged to a definite purpose cannot be used for any other purpose.

(3) We have omitted the word "inviolably" in accordance with the rule of style adopted not to use emphasizing words which add nothing to the meaning.

On the question,

Will the committee adopt the section as reported?

Mr. PINCHOT. Mr. Chairman: I might say, that the proper title to state forest reservations is "state forests."

The CHAIRMAN. The word "reservation" would be—

Mr. PINCHOT. Unnecessary. I move that the word reservation be stricken from the section.

Mr. CUYLER. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE X, SECTION 8-A.

The committee of the whole proceeded to the consideration of section 8-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

PRINCIPAL BASIC OF INSTRUCTION TO BE IN ENGLISH LANGUAGE.

1 Section 8-A. The basic instruction in public and private schools shall be
2 given in the English language and from English texts.

NOTE.

Source: This is entirely new matter.

The commission believe that while the teaching of the classics and of foreign languages should be encouraged rather than discouraged, it is a matter of vital importance to prevent the establishment and maintenance of schools the real object of which is to discourage the knowledge and use of the English language by the children of parents who have come to America to obtain a livelihood and to secure a freedom denied them in the country of their origin.

Special Note to the commission by the committee on style.

As adopted by the commission this section read as follows:

"The instruction in all public and private schools shall be given in the English language and from English texts."

Literally interpreted, this might prevent the teaching of the classics or a foreign language, and would certainly prevent teaching a foreign language, as French, by a method of instruction in which only French words were spoken or read, which is a modern method employed in teaching foreign languages. The expression "basic instruction" appears to meet the real intent of the commission.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE XII, SECTION 3-A.

The committee of the whole proceeded to the consideration of section 3-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

TIME OF ELECTION.

1 Section 3-A. Judges elected by the electors of the commonwealth at large
2 may be elected at general or municipal elections as prescribed by law.
3 Other officers elected by the electors of the commonwealth at large shall be
4 elected at general elections.
5 Officers not elected by the electors of the commonwealth at large shall be elected
6 at municipal elections.
7 Special election days to fill unexpired terms may be prescribed by law.

NOTE.

Source: (1) Part of article VIII, section 3:

"All judges elected by the electors of the state at large may be elected at either a general or municipal election, as circumstances may require. All elections for judges of the courts for the several judicial districts, and for county, city, ward, borough, and township officers, for regular terms of service, shall be held on the municipal election day: * * *" (Amendment of November 4, 1913.)

(2) Part of article XII, section 1:

"* * * elections of state officers shall be held on a general election day and elections of local officers shall be held on a municipal election day, except when, in either case, special elections may be required to fill unexpired terms." (Amendment of November 2, 1909.)

Changes in Substance: None.

Clarifying Amendment: In the present constitution there is a conflict between the provisions of article XII, section 1, for the election of "state officers" at general elections, and the provisions of article VIII, section 3, for the election of "judges" at municipal elections. The language of the section proposed permits the election of judges elected by the electors of the commonwealth at large on either a municipal or a general election day.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

Mr. REED. I wonder whether it would be well to add to the fourth provision: "Special election days to fill unexpired terms may be prescribed by law," "and may be held at the same time as general or municipal elections." I do not know that it adds anything to it, but at the same time it might.

The CHAIRMAN. I recall a case under the act of 1913 or 1915, which ever it is, providing for the election of United States senators to fill vacancies, but that is a provision that the election shall be held on the next general election day.

Mr. REED. This is only permissive; they may be held.

The CHAIRMAN. Yes, but I think they would have the power to do that anyhow. The legislature could fix a special election day or a—

Mr. REED. I only ask for information. There is a municipal election under the present constitution.

The CHAIRMAN. The municipal election is in the odd-numbered years and the general election in the even-numbered years.

Mr. McCORMICK. Do they call them municipal elections?

The CHAIRMAN. Yes, in the odd-numbered years there are municipal elections.

Mr. McCORMICK. The governor is elected at the municipal elections?

The CHAIRMAN. Yes; when the governor is elected, he is elected in the even-numbered years.

Mr. GORDON. This is all new to me. I am in the dark, and I ask for information. "Judges elected by the electors of the commonwealth at large may be elected at general or municipal elections as prescribed by law. Other officers elected by the electors of the commonwealth at large shall be elected at general elections. Officers not elected by the electors of the commonwealth at large shall be elected at municipal elections." At what elections are the judges elected?

Mr. REED. That is what follows.

Mr. GORDON. That is right, then?

Mr. REED. Yes, sir.

The CHAIRMAN. I think this simply clarifies the law as it is today.

On the question recurring,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE XII, SECTION 3-B.

The committee of the whole proceeded to the consideration of section 3-B as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

INCOMPATIBLE OFFICERS.

Section 3-B. No person shall be a member of the general assembly or shall hold under the state government or under a municipality, an office or place of trust or profit in respect of which he shall receive compensation, except that of attorney at law or in the militia, if he

(a) Is a member of the congress;

(b) Holds an office or place of trust or profit under the United States;

(c) Holds, in addition, the office of governor, of lieutenant governor, or of a judge learned in the law;

(d) Has, in addition, become a member of the general assembly, and the term for which he was elected has not expired.

A judge learned in the law shall not hold an office of trust or profit under another state or under a municipality thereof.

No person shall serve as an election officer who shall, within two months, have been a member of the congress or of the general assembly or have held an office or place of trust or profit under the United States or under the state government or under a municipality, save only the office of justice of the peace and of notary public and office of the militia.

Laws may be enacted declaring what other offices or places of trust or profit are incompatible with each other or with membership in the general assembly.

NOTE.

Source: Clause (a) covers that part of article II, section 6, which provides that "no member of congress * * * shall be a member of either house during his continuance in office," and that part of article XII, section 2, which provides that "no member of congress from this state * * * shall at the same time hold or exercise any office in this state to which a salary, fees or perquisites shall be attached."

Clause (b) includes that part of article II., section 6, which provides that "no * * * person holding any office (except of attorney-at-law or in the militia) under the United States * * * shall be a member of either house during his continuance in office," and that part of article XII, section 2, which provides that no "person holding or exercising any office or appointment of trust or profit under the United States, shall at the same time hold or exercise any office in this state to which a salary, fees or perquisites shall be attached."

"Clause (c) covers that part of article IV, section 6, which provides that "No * * * person holding any office under * * * this state shall exercise the office of governor or lieutenant governor."

The remaining provision of article IV, section 6, not included in clause (c) as above, namely, that "No member of congress or person holding any office under the United States * * * shall exercise the office of governor or lieutenant governor," is also included in the present constitution under article XII, section 2, which is covered herein by clauses (a) and (b).

Clause (d) includes that part of article II, section 6, which provides "No senator or representative shall, during the time for which he shall have been elected, be appointed to any civil office under this commonwealth." In connection with the introductory clause, it also clarifies, as explained below (Clarifying Amendments), an uncertainty in article II, section 6, of the existing constitution.

The second paragraph includes so much of the last clause of article V, section 18, as is not included in clauses (b) and (c) of this proposed section. The last clause of article V, section 18, provides that judges learned in the law shall not "hold any office or profit under the United States, this state or any other state." So far as offices under the United States are concerned, this is covered by clause (d); and so far as this state is concerned, by clause (c).

The third paragraph is transferred from the first part of article VIII, section 15, amended with respect to style. In the existing constitution, this section reads:

"No person shall be qualified to serve as an election officer who shall hold, or shall within two months have held, any office, appointment or employment in or under the government of the United States, or of this state, or of any city, or county, or of any municipal board, commission or trust in any city, save only justices of the peace and aldermen, notaries public and persons in the militia service of the state; nor shall any election officer be eligible to any civil office to be filled at an election at which he shall serve, save only to such subordinate municipal or local offices, below the grade of city or county offices, as shall be designated by general law."

The last paragraph covers the last sentence of article XII, section 2, which reads, in the present constitution:

"The general assembly may by law declare what offices are incompatible."

Changes in Substance: The words in clause (c) "or of a judge learned in the law" prevent a person holding the office of judge and the same time any other public office under the state government or under a municipality.

Clarifying Amendment: It is not clear, under article II, section 6 of the present constitution, what is the exact meaning of "civil office under this commonwealth," to which members of the general assembly cannot be appointed. Is every public office except a military office a "civil office," or are executive offices, only, "civil offices?" Does "commonwealth" mean state government, or does it include both state and municipal governments?

The section as proposed prevents a member of the general assembly, during the term for which he was elected from "holding any office or place of trust or profit under the state or a municipal government for which he shall receive compensation."

Changes in Style: The commission's rules of style have been followed.

Special Note to the commission by the committee on style.

Recommendation of Change in Substance.

Alter to read:

"No person shall be a member of the general assembly or shall hold under the state government or under a municipality, an office or place of trust or profit in respect of which he shall receive compensation, except that of attorney-at-law, or in the militia, if he

"(a) Holds, in addition, an office or place of trust or profit under the United States, the state government, a municipal government, the state or a municipal government of any other state, or is a member of the congress or of the legislature of any other state.

"(b) Has, in addition, become a member of the general assembly, and the term for which he was elected has not expired.

"Laws may be enacted declaring what other offices or places of trust or profit are incompatible with each other or with membership in the general assembly."

The committee submit that the various provisions of the present constitution with respect to incompatible offices are aimed at a single evil, i. e., the vesting of more than one compensated public office in a single person. The complicated provisions of the present constitution attack this evil partly, but with no logical entirety.

The provision of the present constitution with respect to election officers is, in the opinion of the committee, wholly unnecessary.

On the question,

Will the committee adopt the section as reported?

Mr. REED. Mr. Chairman: As I understand this, no member of the general assembly shall hold office under the state government or under a municipality if he holds in addition, that is, he can not be an officer and hold office under a municipality if he holds in addition an office under a municipal government. What does that mean?

Mr. GORDON. Mr. Chairman: May I ask the secretary of the commission if this makes any change in the existing law, or is it supposed to make it clearer?

The SECRETARY. Yes, the section as set forth by the committee makes no change in the existing law. It merely gathers all the scattered provisions into one section, but the change recommended by the committee under a special note to the commission appended to

this section, is a change in substance, because it makes a universally applicable rule that no one can hold two offices of trust and profit at the same time in this state under the present constituion, and under the section as set forth and adopted by the commission that is not universally so. But if the commission adopt the recommendation of the committee on style, it will be universally true that a person can not hold a municipal or a state office and at the same time hold any other municipal office or state office.

Mr. GORDON. Why could it not be said just as you said it now instead of this composite thing here, which is difficult to read and requires one to carry the thought from the beginning to the end? Is not the existing instrument clear enough and simple enough?

The SECRETARY. The existing provisions are scattered through a large number of sections. The committee did find it, I believe, hard to understand; but the draft of the constitution, as recommended by the committee on style, containing the substantive change which I have indicated, was the result of the committee's effort, I understand, on that very difficult subject, the expressing of that universal idea that two offices could not be held at one time.

The CHAIRMAN. Judge Gordon, in the notes of the committee on style there is a gathering together of all the provisions of the constitution as they now exist.

Mr. REED. Could a man be a city engineer in two municipalities under this or a borough engineer, could he be an engineer in a county and in a city?

The SECRETARY. That would depend upon whether the courts hold that the position of city engineer was an office. The committee had that question looked up and found that the word "office" had received slightly different interpretations at different times, but were unable, as I understand, to suggest any clearer wording.

Mr. FOX. Then if the court should decide that he did not hold an "office," would it hold that he held a "place of trust or profit."

The CHAIRMAN. I think it would. The suggestion made by Judge Reed was not called to mind. I think there is danger in that for the reason that Judge Reed suggests. I happen to be the solicitor of a borough, and I think it would be a dangerous thing to adopt this suggestion in the light of what Judge Reed says.

Mr. REED. I was going to say that was closer to his heart. He could not be attorney general and solicitor for a borough at the same time.

The CHAIRMAN. I think that would be to make an unwise selection.

ARTICLE XII, SECTION 3-B, POSTPONED.

Mr. REED. I would suggest that we pass that until morning and let somebody think about it. I move that this section be postponed for the present.

Mr. GORDON. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE XII, SECTION 3-C.

The committee of the whole proceeded to the consideration of section 3-C as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

DISQUALIFICATIONS FROM HOLDING OFFICE.

1 Section 3-C. No person shall be a member of the general assembly or shall
2 hold, under the state government or under a municipality, an office or place of
3 trust or profit if he has
4 (a) Been convicted of embezzlement of public money, of bribery, of attempted
5 bribery, of perjury or other infamous crime, or of fraud in connection
6 with an election while a candidate for office, or of wilful violation of an
7 election law while a candidate for office;
8 (b) Within five years, being a member of the general assembly or an officer
9 of the state government, used the money of the state government for an
10 unauthorized purpose or made a profit therefrom;
11 (c) Been convicted upon impeachment;
12 (d) Served as an election officer at the election at which such position of
13 member of the general assembly or office or place of trust or profit was
14 filled, except in the case of such municipal offices, other than county
15 or city offices, as may be prescribed by law.

NOTE.

Source: Clause (a) includes (1) article II, section 7, which provides:

"No person hereafter convicted of embezzlement of public moneys, bribery, perjury or other infamous crime shall be eligible to the general assembly or capable of holding any office of trust or profit in this commonwealth."

Also (2) that part of article III, section 32, which provides:

"* * * any person convicted of either of the offenses aforesaid" (i. e., bribery or corrupt solicitation) shall, as part of the punishment therefor, be disqualified from holding any office or position of honor, trust or profit in this commonwealth."

And (3) that part of article VIII, section 9, which provides:

"Any person who shall, while a candidate for office, be guilty of bribery, fraud or wilful violation of any election law, shall be forever disqualified from holding an office of trust or profit in this commonwealth; and any person convicted of wilful violation of the election laws shall, in addition to any penalties provided by law, be deprived of the right of suffrage absolutely for a term of four years."

This specially disqualifies a person from holding public office who has been guilty of bribery and is a duplication of article II, section 7, of the present constitution, which has been transferred to this clause.

Clause (b) includes that part of article IX, section 14, which provides:

"The making of profit out of the public moneys or using the same for any purpose not authorized by law by any officer of the state, or member or officer of the general assembly * * * but part of such punishment shall be disqualification to hold office for a period of not less than five years."

Clause (c) includes (1) that part of article VI, section 3, which provides:

"* * * but judgment in such cases" (cases of impeachment) "shall not extend further than to removal from office and disqualification to hold any office of trust or profit under this commonwealth * * *."

The wording of the clause as herein suggested would make it certain that conviction on impeachment of its own force disqualifies a person impeached, convicted and removed from office from thereafter holding any office of trust or profit. (See Recommendations of Change in Substance [1], infra.)

The clause also covers (2) that part of article VII, section 1, which provides:

"* * * any person" (i. e., a member of the general assembly, officers of the state government and county officers) "who shall be convicted of having * * * violated said oath or affirmation" (oath of office) "shall be * * * forever disqualified from holding any office of trust or profit within this commonwealth * * *."

We are of the opinion that no officer can be convicted of having violated his oath of office except by the process of impeachment. In other words, that there is no common law crime of "violation of oath of office" for which a person can be indicted and convicted, and therefore that the part of article VII, section 1, of the present constitution, quoted is a duplication of the provisions of article VI, section 3, of the present constitution which, as here explained, are covered by clause (c), as proposed.

Indeed, the provisions, in the present constitution, of article VII, section 1, in respect to disqualifications, are not as wide as those in article VI, section 3. Under article VI, section 3, of the present constitution, a municipal officer may be impeached and convicted and if so impeached and convicted, is disqualified from holding any office of trust or profit. Under article VII, section 1, only members of the general assembly, state officers and county officers, being impeached and convicted, are disqualified from holding any office of trust or profit.

Clause (d) includes that part of article VIII, section 15, which provides: "* * * nor shall any election officer be eligible to any civil office to be filled at an election at which he shall serve, save only to such subordinate municipal or local offices, below the grade of city or county offices, as shall be designated by general law."

(For explanation of wording of clause [d], see Clarifying Amendments [3].)

Changes in Substance: None.

Clarifying Amendments: (1) In the present constitution, the wording of article VI, section 3, leaves it uncertain whether conviction on impeachment and removal from office necessarily include disqualification from thereafter holding office. In clause (e), as proposed, conviction on impeachment carries with it this disqualification.

(2) In article VI, section 3, it is provided that the disqualification extends to holding an office of trust or profit "under this commonwealth." This leaves it uncertain whether a municipal office is an "office under the commonwealth." The same uncertainty exists in article II, section 7, in article III, section 32, in article VI, section 1, and in article VIII, section 9. The wording of the section as proposed will make it certain that the disqualification extends to a municipal office as well as to an office under the state government.

(3) Article VIII, section 15, of the present constitution, provides that an election officer is not eligible to any "civil office" to be filled at an election at which he shall serve. Though, throughout the present constitution, the word "office" or the words "civil office" usually do not include a member of the general assembly, we believe that the intent of the drafters of article VIII, section 15, as it appears in the present constitution, was to prevent an election officer being elected to the general assembly. This is not certain, however. Clause (d) as proposed makes it certain that a person who serves as an election officer is ineligible to a seat in the general assembly.

Special Note to the commission by the committee on style.

Recommendation of Change in Substance.

Strike out line 5, the words "or other infamous crime."

The use in the present constitution and in the section as here reported of the expression as "infamous crimes" is most unfortunate. The meaning is notoriously uncertain. Dean William A. Mikell, of the Law School of the University of Pennsylvania, who is the expert engaged to assist the commission appointed to revise the criminal code of the commonwealth, writing to the commission, says:

"The term 'infamous crime' has no definite meaning. Blackstone uses the expression 'infamous persons' as persons who may be challenged as jurors proper delictum, and at common law the term 'infamous crime' meant one of which the conviction rendered the person convicted incompetent as a witness. These crimes seem to have been any treason, felony, perjury, forgery, suppression of testimony, or the like. In this country the courts are not agreed as to what is an infamous crime. The supreme court of the United States makes the test the character of the punishment. It would be generally agreed that any crime the punishment for which is or may be death or imprisonment in a state penitentiary is an infamous crime. It has been so held by the supreme court of the United States and some of the states. In Commonwealth vs. Shaver, 3 Watts and S. 338, it was held that the term 'infamous crime' means 'such a felony as would hold the perpetrator up to public disgrace, such as forgery, perjury, treason, etc.'

"* * * * * * *

"It is well-night impossible to say just what the framers of the constitution meant in using this term, since the decisions of the courts, both state and federal, and even the different federal courts, have construed the term in such various ways. It would take considerable study of the decisions immediately prior to the adoption of the present constitution to arrive at any opinion as to the meaning intended by the framers to be given to this section."

Mr. REED. That does not apply to the chairman, I hope.

The CHAIRMAN. The recommendation of the committee is to strike out on line 5, the words "or other infamous crime," for the reasons set forth by the committee on style in its recommendation to the commission.

On the question,

Will the committee agree to the amendment?

Mr. GORDON. May I ask the secretary the reason for striking out the words "or other infamous crime?"

The CHAIRMAN. The reason is found in the note to this section. It may not be a convincing reason, but it is stated that it should be stricken out because the words "other infamous crime" have no definite meaning in law.

Mr. REED. Dean Somebody here says that the supreme court has held that an "infamous crime" is something that will hold the perpetrator up to public disgrace, such as perjury, forgery and treason.

Mr. GORDON. There are certain public officers removable from office on conviction of certain infamous offenses.

The CHAIRMAN. I think the words ought to be in. Unless there is objection, this suggested change will be dropped.

On the question recurring,

Will the committee adopt the section as reported?

Mr. GORDON. I would like to ask what clause (b) means. Clause (a) has reference to the various convictions named, and clause (b) is, "Within five years, being a member of the general assembly or an officer of the state government, used the money of the state government for an unauthorized purpose or made a profit therefrom." How is that ascertained?

The CHAIRMAN. As I understand it, that is in the present constitution, which provides, "The making of profit out of the public moneys or using the same for any purpose not authorized by law by any officer of the state, or member or officer of the general assembly, shall be a misdemeanor and shall be punished as may be provided by law, but part of such punishment shall be disqualification to hold office for a period of not less than five years." It was the purpose to group all these disqualifying clauses in the constitution under one section.

Mr. GORDON. My point is, how is it to be ascertained that he has used public money? It don't say "conviction." Surely a man ought to be convicted of the offense.

The CHAIRMAN. My understanding is—

Mr. GORDON. I am not making myself clear to you.

The CHAIRMAN. Yes, but my understanding is, Judge Gordon, that this embodies the language of the present constitution, it does not say "conviction." In the notes by the committee on style to the commission on this section appear the different sections of the present constitution which the committee has endeavored to group under this single section relating to disqualification for holding office.

Mr. GORDON. The existing constitution must have contained the word "conviction" as quoted here in your explanatory part of the note. "Clause (b) includes that part of article IX, section 14, which provides: 'The making of profit out of public moneys or using the same for any purpose not authorized by law by any officer of the

state, or member or officer of the general assembly, shall be a misdemeanor and shall be punished as may be provided by law, but part of such punishment shall be disqualification to hold office for a period for not less than five years.'" Obviously, therefore, the word "convicted" ought to be in that section.

The CHAIRMAN. I think it ought to be.

Mr. GORDON. Yes.

Mr. REED. Then I move to amend clause (b) by adding the words "upon conviction of having within five years," and so forth.

Mr. GORDON. Mr. Chairman: I second the amendment.

On the question,

Will the committee agree to the amendment?

The CHAIRMAN. The Secretary will read clause (b).

The secretary read clause (b) as follows:

> (b) "Within five years, being a member of the general assembly or an officer of the state government, upon conviction of using the moneys of the state government for an unauthorized purpose or making a profit therefrom."

Mr. REED. Put it in the other line. The conviction must be within five years. As you have read it he must be convicted of having done it within five years.

The SECRETARY. I read it to ascertain where it was desired to put it in.

Mr. REED. I think it should be "Upon conviction of having within five years, being a member of the general assembly," and so on.

On the question recurring,

Will the committee agree to the amendment?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XII, SECTION 3-D.

The committee of the whole proceeded to the consideration of section 3-D as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

OFFICIAL OATH.—HOW ADMINISTERED.

1 Section 3-D. The following oath or affirmation shall be administered to
2 members of the general assembly, officers of the state government and county
3 officers, and shall be subscribed by them before they take office: I do "solemnly
4 swear (or affirm) that I will support, obey and defend the constitution of the
5 United States and the constitution of the commonwealth; and that I will dis-
6 charge the duties of my office with fidelity; that I have not paid or con-
7 tributed, or promised to pay or contribute, either directly or indirectly, any
8 money or other valuable thing to procure my nomination or election (or ap-
9 pointment), except for necessary and proper expenses expressly authorized by
10 law; that I have not knowingly violated any election law of the common-
11 wealth, or procured it to be done by others in my behalf; that I will not
12 knowingly receive, directly or indirectly, any money or other valuable thing
13 for the performance or non-performance of any act or duty pertaining to my
14 office, other than the compensation allowed by law."
15 The oath or affirmation shall be administered to a member of the general
16 assembly by a judge of the supreme court or of a court of common pleas in
17 hall of the house to which the affiant has been elected.
18 The oath or affirmation of a member of the general assembly or officer of the
19 state government shall be filed with the secretary of the commonwealth. The
20 oath or affirmation of any officer shall be filed with the prothonotary of the
21 county in which he is to discharge his duties.

NOTE.

Source: Article VII, section 1:

"Senators and representatives and all judicial, state and county officers shall, before entering on the duties of their respective offices, take and subscribe the following oath or affirmation: 'I do solemnly swear (or affirm) that I will support, obey and defend the constitution of the United States and the constitution of this commonwealth; and that I will discharge the duties of my office with fidelity; that I have not paid or contributed or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure my nomination or election (or appointment), except for necessary and proper expenses expressly authorized by law; that I have not knowingly violated any election law of this commonwealth, or procured it to be done by others in my behalf; that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office, other than the compensation allowed by law.'

"The foregoing oath shall be administered by some person authorized to administer oaths, and in the case of state officers and judges of the supreme court, shall be filed in the office of the secretary of the commonwealth, and in the case of other judicial and county officers, in the office of the prothonotary of the county in which the same is taken; any person refusing to take said oath or affirmation shall forfeit his office; and any person who shall be convicted of having sworn or affirmed falsely, or of having violated said oath or affirmation, shall be guilty of perjury, and be forever disqualified from holding any office of trust or profit within this commonwealth. The oath to the members of the senate and house of representatives shall be administered by one of the judges of the supreme court or of a court of common pleas, learned in the law, in the hall of the house to which the members shall be elected."

Changes in Substance: None.

Changes in Style: (1) The oath is unchanged except for the substitution of "the" for "this" before commonwealth.

(2) The statement that a person who swears falsely is guilty of perjury omitted as unnecessary.

(3) The statement, that a person who fails to perform the things he takes an oath to perform is guilty of perjury, is omitted because it is an obvious misuse of the word "perjury." A person who does not perform his duties may be removed as prescribed in the constitution, and a person who accepts a bribe, which is the matter covered in the last part of the first paragraph of article VII, section 1, of the present constitution, will be disqualified from holding office by the provisions of article XII, section 3-B, as proposed.

Special Note to the commission by the committee on style.

Recommendation of Change in Substance.

Change the second paragraph, lines 18 to 21, to read:

The oath or affirmation shall be administered to a member of the general assembly by a judge of a court of record in the hall of the house to which the affiant has been elected.

The present constitution requires the oath of office to be administered to members of the general assembly by "one of the judges of the supreme court or of a court of common pleas learned in the law." As proposed in the suggested amendment, the oath could be administered by any judge of a court of record. This will enable a judge of the superior court or any judge holding the dignified office of a judge of a court of record to administer the oath. Under the provisions of the present constitution, though it was possible to create the superior court, which has jurisdiction on appeal from judgments of the common pleas, it is not possible for a judge of the superior court to administer the oath. The change suggested avoids such an absurdity, while preserving the principle that the oath should be administered only by a judge of a principal court.

On the question,

Will the committee adopt the section as reported?

Mr. REED. Mr. Chairman: There is a change in style. First, the criticism is that "The statement that a person who swears falsely is guilty of perjury omitted as unnecessary." But it does not do any harm to put it in there again. It makes it a little more emphatic. What is number three? "The statement, that a person who fails to perform the things he takes an oath to perform is guilty of perjury, is omitted because it is an obvious misuse of the word 'perjury.'"

If the constitution chooses to define that as perjury and the legislature chooses to define it as perjury, what would be the objection?

Mr. GORDON. Judge Reed is undoubtedly right about it. Ordinarily perjury consists, under common law, perjury consists of giving false testimony in a matter relating to a point at issue, but it can be perjury not to keep a promise or pledge or oath; certainly it can be statutory perjury.

Mr. KELLY. Well, should it be, Judge? It may be, but should it be?

Mr. GORDON. Why not?

Mr. REED. Now there is another illustration of what we were talking about this afternoon or this morning or sometime. Here is a clause of the constitution which has been in force for fifty years. Everybody understands it. A man makes or takes an oath before that bar. He knows what the constitution provides. Now, why change it unless there is a good reason better than theoretical?

Mr. GORDON. There are certain offenses nonfeasance in office which have been punishable as perjury, violation of the official oath, failure of peace officers to perform duties in certain contingencies with reference to the office. I prosecuted a mayor of one of the cities of this commonwealth for that very thing, the violation of his official oath.

The CHAIRMAN. In the matter before the commission, does Judge Reed move to substitute the existing provision?

Mr. REED. Mr. Chairman: I move we substitute the existing provision.

Mr. GORDON. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question,

Will the committee agree to the section as amended?

Mr. REED. Mr. Chairman: We are overlooking the fact that there is a suggestion of a change of substance in the committee's notes with reference to the oath. I do not know what that means.

The CHAIRMAN. As it means now it must be administered by a judge of the supreme court or—

Mr. REED. I suppose an orphans' court judge could administer an oath.

The CHAIRMAN. The present constitution requires that the oaths of the members of the general assembly shall be administered by one of the judges of the supreme court or one of the judges of the court of common pleas learned in the law.

Mr. REED. There is nothing material in this.

The CHAIRMAN. No, it is not important enough.

Mr. GORDON. It may be interesting to the members of the Commission to know that in the constitutional convention of 1874 Judge Black offered a provision requiring public officers at the end of their terms to take an oath that they had not violated this oath while they were in office, that they had not received any money or other valuable thing for the performance of any official act; and it was debated for many days, and its ultimate fate was the rejection of the provision which required an exculpatory oath at the end of his term.

The CHAIRMAN. Having adopted the motion to insert the language of the original constitution, the change suggested by the committee would fall.

On the question recurring,
Will the committee agree to the section as amended?
It was agreed to.

ARTICLE XII, SECTION 3-E.

The committee of the whole proceeded to the consideration of section 3-E as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

EXTENSION OF TERM.

Section 3-E. The term of a public officer shall not be extended and his compensation shall not be increased or decreased after his election or appointment except that the compensation of a judge required to be learned in the law may be increased.

NOTE.

Source: Article III, section 13:

"No law shall extend the term of any public officer, or increase or diminish his salary or emoluments, after his election or appointment."

Changes in Substance: The provision that a judge's salary may be increased but not diminished is new. Under the present constitution (article III, section 13), the salary of public officers can be neither increased or diminished during his term. This has been held not to apply to judges (Commonwealth vs. Mathues, 210 Pa. 372). The commission believe that a judge's salary should not be diminished but that it should be possible to increase it, because a judge serves for a longer term than other public officers. As proposed by the commission and in the present constitution, the terms of supreme court judges are twenty-one years, and of common pleas judges, ten years. The terms of superior court judges, as proposed, are twenty-one years. The recent great increase in the cost of living demonstrates the desirability of permitting the general assembly to apply an increase in the salaries of long-term offices to a present incumbent.

Changes in Style: The commission's rules of style have been followed.

On the question,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE XII, SECTION 3-F.

The committee of the whole proceeded to the consideration of section 3-F as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

IMPEACHMENT.

Section 3-F. All officers of the state government or of a municipal government shall be liable to impeachment for a misdemeanor in office. The power of impeachment shall be vested in the house of representatives. An impeachment shall be tried by the senate after each senator has been put on special oath or affirmation. The person impeached can be convicted only with the consent of two-thirds of the senators present. Such conviction shall operate to remove from office the person convicted and to disqualify him from holding a public office or place of trust or profit, but shall extend no further. The person impeached, whether acquitted or convicted, may be liable to indictment, trial, judgment and punishments as prescribed by law.

NOTE.

Source: (1) Article VI, section 1:

"The house of representatives shall have the sole power of impeachment."

(2) Article VI, section 2:

"All impeachments shall be tried by the senate; when sitting for that purpose the senators shall be upon oath or affirmation; no person shall be convicted without the concurrence of two-thirds of the members present."

(3) Article VI, section 3;

"The governor and all other civil officers shall be liable to impeachment for any misdemeanor in office, but judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of trust or profit under this commonwealth; the person accused, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment and punishment according to law."

Changes in Substance: None.

Clarifying Amendments: (1) In article VI, section 3, it is provided that all "civil officers" shall be liable to impeachment. Do "civil officers" include members of the general assembly—or the officers of a municipality? In the wording proposed, it is made certain that judges are liable to impeachment.

(2) Article VI, section 3, provides "but judgment in such cases shall not extend further than to removal from office." This leaves it uncertain whether conviction, of itself, removes from office. Under the wording proposed, it would be certain that conviction operated as a removal from office.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

Mr. REED. Mr. Chairman: Well now, I don't want to be talking all the time.

The CHAIRMAN. You are always talking to good purpose.

Mr. REED. We have a provision in the charter of the city of Pittsburgh, at least we did have, and I think we have, that the mayor can be removed, the members of council, other officers of the city could be impeached by the city council and removed. Is it the purpose that every burgess, mayor or minor city or borough officer shall be impeached in the house of representatives by the house of representatives?

The CHAIRMAN. I think there must be some mistake or misunderstanding about that.

Mr. REED. I can see how it arose, because the old constitutional provision that the house of representatives shall have the sole power of impeachment; but that only applies to state officers. Now you have added to it the municipal officers, which I suppose means minor officers.

The CHAIRMAN. The amendment would be to strike out the words "or of a municipal government," so it would be confined to the state officials.

Mr. FISHER. Mr. Chairman: I move that the words "or of a municipal government" be stricken out of this section.

Mr. STACKPOLE. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XII, SECTION 3-G.

The committee of the whole proceeded to the consideration of section 3-G as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

REMOVAL OF OFFICERS IN WAYS OTHER THAN BY IMPEACHMENT.

1 Section 3-G. An officer who shall be convicted of an infamous crime or of a
2 crime the commission of which involves the violation of an obligation imposed
3 on him as an officer, shall thereby forfeit his office and shall be otherwise pun-
4 ished as prescribed by law.
5 Appointed officers, other than judges of courts of record, may be removed
6 at the pleasure of the appointing power.

7 Elected officers of the state government, except the governor, the lieutenant
8 governor, and judges of the courts of record, shall be removed by the governor
9 for reasonable cause, after due notice and full hearing, on the address of two-
10 thirds of the senate.
11 Judges of courts of record other than the justices of the supreme court, may
12 be removed by the governor for reasonable cause after due notice and full hear-
13 ing on the address of two-thirds of each house of the general assembly.

NOTE.

Source: (1) Part of article V, section 15:

"All judges required to be learned in the law, except the judges of the supreme court * * * for any reasonable cause, which shall not be sufficient ground for impeachment, the governor may remove any of them on the address of two-thirds of each house of the general assembly."

(2) Part of article VI, section 4:

"All officers * * * shall be removed on conviction of misbehavior in office, or of any infamous crime. Appointed officers, other than judges of the courts of record and the superintendent of public instruction, may be removed at the pleasure of the power by which they shall have been appointed. All officers elected by the people, except governor, lieutenant governor, members of the general assembly and judges of the courts of record learned in the law, shall be removed by the governor for reasonable cause, after due notice and full hearing, on the address of two-thirds of the senate."

Changes in Substance: None.

Clarifying Amendment: The expression in the present constitution (article VI, section 4), "conviction of misbehavior in office," is without meaning. There is no such crime as "misbehavior in office," either at common law or by statute. The wording of the first paragraph probably expresses the meaning intended.

Changes in Style: The commission's rules of style have been followed.

Special Note to the commission by the committee on style.

Explanation of Re-Insertion of Part of Article V, Section 15.

Article V, section 15, of the present constitution provides for the removal of all judges, except those of the supreme court, by the governor, on address of two-thirds of each house of the general assembly. This provision, in so far as it concerns judges of the courts of common pleas, was transferred to section 4. Section 15 was then dropped, although removal of other judges by the governor was thus left unprovided for. Assuming that this was an inadvertence, we have reinstated article, XII, section 3-G, the provision of the present constitution relating to the removal of other judges by the governor.

Recommendation of Change in Substance.

Strike out the first paragraph, and insert:

"An officer who shall be convicted of treason, of misprision of treason, of bribery, of wilful violation of the election laws or of a crime the commission of which involves the violation of an obligation imposed on him as an officer, shall thereby forfeit his office and shall be otherwise punished as prescribed by law."

Your committee make this recommendation for the reasons stated in the note to article XII, section 3-C, recommending the omission of all reference to "infamous crimes" because of the uncertainty as to what is an infamous crime. We believe that an exact statement of the crimes which involve forfeiture of office should be made.

On the question,

Will the committee adopt the section as reported?

Mr. FOX. Mr. Chairman: Before we take up the recommendation of a change of substance. I would like to suggest that in the eleventh line, "Judges of courts of record other than justices of the supreme court," ought to be changed to read, "Judges of courts other than justices of the supreme court and judges of the superior court."

The CHAIRMAN. Does Judge Fox make that as a motion?

Mr. FOX. Mr. Chairman: I move that "and judges of the superior court" be inserted after the word "court" in line 11.

Mr. FISHER. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the committee agree to the section as amended?

The CHAIRMAN. The substitute of the committee on style for the first paragraph is "an officer who shall be convicted of treason, of misprison of treason, of bribery, of wilful violation of the election laws or of a crime the commission of which involves the violation of an obligation imposed upon him as an officer, shall thereby forfeit his office and shall be otherwise punished as prescribed by law."

On the question,

Will the committee agree to the substitute?

Mr. REED. That brings up the same question of "infamous crimes," and limits the right of removal to certain specific things.

The CHAIRMAN. It is the same principle. If you want to be consistent you will have to vote it down.

Mr. REED. As it is reported it has a very broad effect, infamous crime or violation of an obligation.

On the question recurring,

Will the committee agree to the substitute?

It was not agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XII, SECTION 3-I.

The committee of the whole proceeded to the consideration of section 3-I as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

BRIBERY.

1 Section 3-I. A member of the general assembly who shall receive or agree
2 or offer to receive for himself or for another a valuable consideration to in-
3 fluence the performance of a public duty, or a person who shall give or promise
4 or offer to give a valuable consideration to a member of the general assembly or
5 to any officer of the state government or of a municipality, to influence him in
6 the performance of a public duty, shall be guilty of bribery, and shall be pun-
7 ished as prescribed by law.
8 In a prosecution for bribery or attempted bribery, or in an investigation there-
9 of, no testimony except that of the accused shall be withheld on the ground that
10 it may criminate the witness or subject him to infamy. Such testimony shall
11 not afterwards be used against the witness in a judicial proceeding except in a
12 prosecution for perjury in giving such testimony.

NOTE.

Source: (1) Article III, section 29:

"A member of the general assembly who shall solicit, demand, or receive, or consent to receive, directly or indirectly, for himself or for another, from any company, corporation, or person, any money, office, appointment, employment, testimonial, reward, thing of value or enjoyment, or of personal advantage, or promise thereof, for his vote or official influence, or for withholding the same, or with an understanding, expressed or implied, that his vote or official action shall be in any way influenced thereby, or who shall solicit or demand any such money or other advantage, matter or thing aforesaid for another, as the consideration of his vote or official influence, or for withholding the same, or shall give or withhold his vote or influence in consideration of the payment or promise of such money, advantage, matter or thing, to another, shall be held guilty of bribery within the meaning of this constitution, and shall incur the disabilities provided thereby for said offense, and such additional punishment as is or shall be provided by law."

(2) Article III, section 30:

"Any person who shall, directly or indirectly, offer, give, or promise, any money, or thing of value, testimonial, privilege, or personal advantage, to

any executive or judicial officer, or member of the general assembly, to influence him in the performance of any of his public or official duties, shall be guilty of bribery and be punished in such manner as shall be provided by law.

(3) Article III, section 31:

"The offense of corrupt solicitation of members of the general assembly or of public officers of the state or of any municipal division thereof, and any occupation or practice of solicitation of such members or officers to influence their official action, shall be defined by law and shall be punished by fine and imprisonment."

(4) Part of article III, section 32:

"Any person may be compelled to testify in any lawful investigation or judicial proceeding against any person who may be charged with having committed the offense of bribery or corrupt solicitation, or practices of solicitation, and shall not be permitted to withhold his testimony upon the ground that it may criminate himself or subject him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving such testimony, * * *."

Changes in Substance: None.

Clarifying Amendment: The provision in article III, section 32, of the present constitution, that "any person may be compelled to testify * * * against any person" in a bribery case has been assumed to refer only to witnesses other than the accused. The common-law principle that no man can be compelled to give evidence which will criminate him is in force in Pennsylvania and is embodied in the act of May 23, 1887, P. L. 158. So far as an accused person is concerned, it has been expressed in the bill of rights, article I, section 9, which provides that "in all criminal prosecutions the accused * * * cannot be compelled to give evidence against himself." So far as mere witnesses are concerned, there are two exceptions to the general rule; one in bribery cases (article III, section 32), and the other in election cases (article VIII, section 10). The commission have assumed that the exception with respect to bribery is not intended to conflict with the bill of rights and have therefor limited it to witnesses other than the accused.

Changes in Style: The proposed section contains in much briefer form the substance of those sections of the present constitution from which it is derived.

Special Note to the commission by the committee on style.

Recommendation of Change in Substance.

(1) Insert in line 1, after "assembly," the words: "or an officer or employe of the state government or of a municipality."

(2) Insert on line 5, after "officer," the words, "or employe."

The present constitution covers corrupt behavior of a member of the general assembly (article III, section 29), and the corrupt behavior of any person who bribes or tries to bribe "any executive or judicial officer or member of the general assembly" (section 30). It fails to cover the corrupt behavior of those executive or judicial officers described in your committee's draft as "officers of the state government or of a municipality." The amendments suggested correct this omission and also make the section cover bribery of employes as well as of officers.

Mr. REED. I suppose I am sleepy, but I do not understand that certain section, which says "no testimony except that of the accused shall be withheld on the ground may criminate the witness or subject him to infamy. Such testimony shall not afterwards be used against the witness in a judicial proceeding except in a prosecution for perjury in giving such testimony." But I guess when I read it I understand it.

The CHAIRMAN. The secretary will explain the section.

The SECRETARY. The second paragraph is article III, section 32, of the present constitution, or that part of it which it considered in this report.

Mr. REED. I reasoned it out myself while I was talking; but you have stricken out the words "corrupt solicitation," haven't you?

The SECRETARY. The words "corrupt solicitation" were stricken out, my understanding is, because "attempted bribery" and "corrupt solicitation" were apparently identical.

Mr. REED. I read that some place in here.

Mr. GORDON. The change in language here by the committee on style, I do not think is an apt one in the vision of such a clear thinker as Judge Reed. "In a prosecution for bribery or attempted bribery, or in an investigation thereof, no testimony except that of the accused shall be withheld on the ground." "Withheld" is not the proper word. As it stands there it would seem to imply that the testimony is withheld in a prosecution. No testimony shall be withheld. Now, in the constitution which is supposed to have been clarified by this change in language says that a person might be compelled to testify, and certainly that expresses the idea there much better than to say that in a prosecution for bribery no testimony shall be withheld on the ground. "Withheld" is not the word to use in that connection. No person can refuse to testify or withhold testimony. Is that testimony which you do not present? And then in a prosecution which is for bribery it is said no testimony shall be withheld in the prosecution, and certainly the meaning of the old constitution is much clearer when it said that the witness might not refuse to testify.

Mr. FOX. I think Judge Gordon is not reading that section of the old constitution exactly "and shall not be permitted to withhold his testimony upon the ground that it may criminate himself."

Mr. GORDON. Yes, that is all right, he withholds it; but this makes the prosecution withhold it.

Mr. FOX. I think we had better adopt that than say it shall be withheld.

Mr. REED. Is there now a statute defining "corrupt solicitations," is it a crime?

Mr. KELLY. Yes, there is.

Mr. REED. Under the notes of this section, article III, section 30, of the present constitution provides "any person who shall, directly or indirectly, offer, give or promise, any money, or thing of value, testimonial, privilege, or personal advantage, to any executive or judicial officer" shall be guilty of bribery. In the section as recommended by the committee, "A member of the general assembly who shall receive or agree to offer to receive for himself or for another a valuable consideration to influence the performance of a public duty, or a person who shall give or promise or offer to give valuable consideration to a member of the general assembly or to an officer of the state government would be guilty of bribery." Have not the words we have stricken out a legal significance, meaning money or property, and do they cover privileges, personal advantages and testimonials? Is not the provision in the present constitution defining bribery much broader and more comprehensive?

Mr. FISHER. Mr. Chairman: In order to get something definite before the commission, I move to strike out in line nine the words. "no testimony except that of the accused shall be withheld," and to substitute in lieu thereof the words, "no witness except the accused shall be permitted to withhold his testimony."

Mr. GORDON. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the committee agree to the section as amended?

Mr. FISHER. I am in sympathy with the observations made by Judge Reed. It seems to be that the general term here used does

not embody everything that we had in the old constitution and I think there ought to be an amendment to carry into effect the suggestion. I do not have it prepared now, but if Judge Reed has, I would be very glad to support it.

The CHAIRMAN. Why not substitute for this the provisions of the old constitution as they are?

Mr. FOX. Mr. Chairman: I was just about to make that motion, sir.

Mr. REED. To substitute sections 29, 30, 31 and 32?

Mr. FOX. Yes. I move to substitute sections 29, 30, 31 and 32.

Mr. REED. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. FISHER. Mr. Chairman: Do I understand that the sections are all to be embodied and consolidated in a new section?

Mr. REED. That is the idea. Before you take that vote, however, what becomes of the provision "officer or employe of the state government or of a municipality?"

The CHAIRMAN. I think it would fall if we adopt this.

Mr. REED. I know; and ought that to fall Ought not that section 29 be amended?

The CHAIRMAN. If Judge Reed will make a motion to adopt his amendment to the motion already made, then they can be written in at their appropriate places.

Mr. REED. Then I move to amend the present motion by changing the words so as to read, "officer or employes of the state government or of a municipality" wherever they appropriately should occur.

Mr. FOX. Mr. Chairman: I accept that.

On the question recurring,

Will the committee agree to the substitute as amended?

It was agreed to.

ARTICLE XVI, SECTION 6.

The committee of the whole proceeded to the consideration of section 6 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

CORPORATE POWERS.

1 Section 6. A corporation shall engage only in the business authorized by its
2 charter.

NOTE.

Source: Article XVI, section 6:

"No corporation shall engage in any business other than that expressly authorized in its charter, nor shall it take or hold any real estate except such as may be necessary and proper for its legitimate business."

Changes in Substance: The provision in the present constitution that a corporation cannot hold any real estate except such as may be necessary and proper for its business has been omitted because if it only means that a corporation cannot hold any real estate for the purpose of engaging in a business not authorized by its charter, such holding is prevented by the wording of the section herein suggested. If the wording of the present constitution may be interpreted as preventing a corporation holding for its future use in its authorized business more property than it is actually using in its business at the moment, the provision is harmful, because it prevents persons carrying on business in corporate form from acting in the conduct of their

business as ordinary prudent business men should act, in that it prevents them from securing sufficient real estate to anticipate what they may reasonably expect to be the needs of their business.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

Mr. CUYLER. Mr. Chairman: The restriction prevailing in the present constitution, and supposed to be continued in this, with reference to corporations owning real estate other than the amount necessary to take care of their present business, it seems to me in some way ought to be broadened. We have had an illustration in Philadelphia, and I suppose all other large cities of the country have them, corporations, banking and trust companies, are very much cramped for room if they do not acquire real estate now for their business. It can not be acquired except at enormous costs in the future, and possibly not at all; and yet they are continually harassed because they can not hold real estate which they are not using for their present business. It seems to me there ought to be a provision made for a corporation to be enabled to look ahead and acquire property so that it can protect its business in the future. I would suggest putting in the words, "except as such as may be or will be necessary and proper." I move that as an amendment.

The CHAIRMAN. As the section now stands those words will be stricken out entirely, and this section would read, "A corporation shall engage only in the business authorized by its charter," and the provisions of the present constitution forbidding the holding of real estate except such as may be necessary and proper for its legitimate business should be left out of the constitution.

Mr. PINCHOT. I move that the words in present constitution be substituted for the section which has been reported.

The CHAIRMAN. Is that motion seconded? The chair hears no second to the motion.

On the question recurring,

Will the committee adopt the section as reported?

Mr. REED. Mr. Chairman: I would like to ask what Mr. Pinchot's idea is.

Mr. PINCHOT. I would like to restore the language of the present constitution. It seems to me to be very much more appropriate than the language of the substitute.

Mr. CUYLER. Do you think a corporation ought to be restricted?

Mr. PINCHOT. I do; precisely as in the present constitution.

On the question recurring,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE XVI, SECTION 7.

The committee of the whole proceeded to the consideration of section 7 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

STOCKS AND BONDS. INDEBTEDNESS.

1 Section 7. Subject to such regulations as to issue and sale as may be pre-
2 scribed by law or by an agency established by law, shares of stock may be issued
3 with or without par value. Shares of stock having par value shall be issued as
4 full paid only for the equivalent of such par value in money, labor done or prop-
5 erty received, but subject to such regulations as may be prescribed by law or by
6 an agency established by law, a corporation may issue additional full paid shares
7 for a consideration in money, labor or property equal to the current market
8 value of its shares theretofore issued. Shares of stock having par value shall
9 be issued as not full paid only for the equivalent in value of money, labor or
10 property received in partial payment. Neither the stock nor the indebtedness
11 of corporations shall be increased except in pursuance of general law or with-
12 out the consent of the person holding the larger amount in value of the stock
13 first obtained at a meeting to be held after thirty days' notice given in pursuance
14 of law.

NOTE.

Source: Article XVI, section 7:

"No corporation shall issue stocks or bonds except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness, shall be void. The stock and indebtedness of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock, first obtained at a meeting to be held after sixty days' notice given in pursuance of law."

Changes in Substance: (1) That part of the section herein proposed which provides that a corporation may issue full-paid shares for a consideration equal to the current market value of the shares heretofore issued, makes it possible for a corporation whose shares are below par on the market to procure additional capital by issuing and selling additional stock below par, provided the price paid by the subscriber is not less than the current market value of the shares theretofore issued. The majority of the commission believe that this exception to the general principal that shares of stock shall not be issued for a value received by the corporation less than that stated on the certificate is wise, because otherwise a corporation whose stock is below par is prevented from securing additional capital by increasing the amount contributed by the owners, and therefore is obliged to secure such additional capital by increasing its liabilities to outsiders. The possible abuse of the privilege of issuing, under the conditions set forth, stock at less than par, is in the judgement of the majority of the commission, sufficiently safe guarded in the provision providing for public notice to be specified in the act regulating the exercise of this constitutional power, or by an agency created by law.

(2) The provision of article XVI, section 7, of the present constitution, requiring bonds to be issued only for money, labor done or property actually received, has been omitted.

(3) The sixty days' notice required in the present constitution for a meeting to pass on proposed issues of stock or indebtedness is reduced to thirty days.

Clarifying Amendments: (1) The statement that stock may be issued without par value prevents the possibility of the rest of the section being interpreted as directly prohibiting stock being issued without par value. There is a possibility of this question being raised under the wording of article XVI, section 7, in the present constitution.

(2) The provisions in article XVI, section 7, of the present constitution, that "all fictitious increase of stock or indebtedness shall be void," is omitted. The provision is ambiguous and therefore merely invites litigation, as there is no basis for determining what a fictitious issue is. To enforce literally the provision would often do great injustice to innocent holders of such securities who buy in good faith without knowledge of the original infirmity of issue.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

Mr. PINCHOT. Mr. Chairman: If it is proper to make a motion I move that the words in lines 5 to 10, as follows, be omitted. "But subject to such regulations as may be prescribed by law, or by an agency established by law, a corporation may issue additional full-paid shares for a consideration in money, labor or property, equal to the current market value of the shares theretofore issued. Shares of stock having par value shall be issued as not full-paid only for the

equivalent in value of money, labor or property received in partial payment," my object being to prevent the issuance of stock otherwise than as full-paid—

The CHAIRMAN. Would your amendment strike those words out?

Mr. PINCHOT. All in line 5, and continuing through to the word "payment" in line 10.

Mr. GORDON. Mr. Chairman: I second the amendment.

On the question,

Will the committee agree to the amendment?

Mr. PINCHOT. I should like to say in support of that amendment that it seems to me that this provision will lead directly as an invitation to stock speculation, that it inevitably would be used for that purpose, that it will constantly result in having stock dropping in price in order that it may be issued again at a raise in price, in order that it may be issued at a price desired, and then manipulated again; and I believe it would be very much against the interests of the people of Pennsylvania if this passed in its present form.

Mr. CUYLER. I hope that the amendment suggested by Mr. Pinchot will not prevail. While it is true some evil might result form issuing stock below par, if not honestly issued. That is liable to happen under any circumstances. Today great corporations in this country find themselves unable to borrow, or rather issue stock and create indebtedness. It is a most unfortunate condition of affairs. Many railroads would be able to finance themselves if they could issue stock at what would be the current market price, which would be a perfectly legitimate and honest transaction. It seems to me proper encouragement ought to be given by the commonwealth and by the state at large to encourage the issue of stock rather than the creation of indebtedness by the issue of bonds. I can't help but feel that this is a very wise provision.

Mr. REED. I believe I was responsible in the first place for that suggestion. In fact we seem to have guarded it by the provision "that subject to such regulations as may be prescribed by law, or by an agency established by law, stock may be issued at the current market value. Mr. Cuyler has exppressed the situation in which many corporations have found themselves, and it has been a very serious embarrassment to some of them. They have been compelled to go out and borrow money, sometimes at very high rates of interest, when they might have sold stock at less than par, the advantage being that they would have to pay back money that is in the stock, whereas they did have to pay the bonds at one hundred cents on the dollar when they only got eighty-five or ninety cents for them. You can speculate with anything. I do not believe it will lead to additional speculation or manipulation of the market because there are laws to punish the action of the board of directors doing that sort of thing if they wilfully depreciate the stock in order to buy it cheaper.

While I am on my feet I want to ask what those lines, eight, nine and ten, mean "Shares of stock having par value shall be issued as not full-paid only for the equivalent in value of money, labor or property received in partial payment." That seems to me inconsistent with the previous sentence which says they may be issued at less than par. After Mr. Pinchot's motion is disposed of then I will ask to amend that.

Mr. McCORMICK. Would it be difficult to fix the current market value of some shares?

Mr. FISHER. This raises an old issue, one that we debated and fought out before the Commission when it was up before for discussion. I assume it is not necessary now to go into much detail, but if this motion were to prevail it would simply mean that any corporation whose stock has fallen below par on the market is prohibited from financing itself by a stock issue. Now, the question is whether greater evil may result by permitting them to support themselves by issuing stock below par or by driving them into bankruptcy. That would be the inevitable result. Perhaps they might adopt some other device for financing themselves, which would enable them to chase the devil around the stump, to use a homely expression.

It seems to me a very unwise provision to insert here. Now, to safeguard against any wild financing this section provides for an approval by a commission which the state may set up for that purpose. At the present time we have the public service commission, which, while not directly charged with supervising the issues of public service companies, indirectly has that power because it can fix the valuation of property and establish rates on the basis of that valuation. So indirectly it is charged with supervising power over the issues of public service companies. It was seriously proposed here to enact blue-sky laws, or something in the nature of blue-sky laws, the purpose of which, of course, would be to prevent the fraudulent and fictitious issue of stock. But an issue may be made for less than par and may be a very proper issue. The passing of this amendment, I think, would have a very serious effect, particularly in periods such as we have just recently passed through.

Mr. CUYLER. Following that same line due to the fact that the interstate commerce commission has to pass upon issues of this kind, so that there is a double safeguard.

Mr. PINCHOT. It is precisely due to this provision that the state of Pennsylvania has reached its present prosperity. That is the only answer. Specific provision is made for the issue of stock without par value, therefore this provision seems to be not only unwise, but unnecessary.

Mr. REED. Yes, but the answer to that is that if the corporation has a charter that calls for stock having par value it can not then issue stock without par value without an amendment to its charter.

On the question,

Will the committee agree to the amendment?

It was not agreed to.

On the question,

Will the committee agree to the section as amended?

The CHAIRMAN. The secretary says that there is a typographical error that may clear up the matter that you have in mind, Judge Reed.

The SECRETARY. In line 8, amend by striking out "Shares of stock having par value shall be issued as not full-paid only for the equivalent in value of money," and so forth.

Mr. REED. But is not that inconsistent with the previous section

The SECRETARY. I can not answer the question. I really do not know what was intended by the drafters of that section.

Mr. REED. Mr. Chairman: I move to amend by striking that sentence out.

Mr. FISHER. Mr. Chairman: I second the amendment.

The amendment was agreed to.

Mr. REED. Of course, if we find out what it means we can put it back.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVI, SECTION 7-A.

The committee of the whole proceeded to the consideration of section 7-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

INVESTMENT OF TRUST FUNDS.

1 Section 7-A. No law shall authorize fiduciaries to invest in securities issued
2 by a corporation except in bonds approved by an agency created by law.

Source: Article III, section 22:

"No act of the general assembly shall authorize the investment of trust funds by executors, administrators, guardians or other trustees, in the bonds or stock of any private corporations, and such acts now existing are avoided saving investments heretofore made."

Changes in Substance: The provision permitting investment in the bonds of a corporation when the investment is approved by an agency created by law is new. The commission believe that as thus carefully safeguarded, the extension of possible trust investments under the wording of the proposed section is advisable. The bonds of many corporations secured by first mortgage are, from the point of view of the careful investor, absolutely safe.

Changes in Style: The provision in the present constitution "and such acts now existing are avoided saving investments heretofore made" is admitted it has become obsolete.

Special Note to the commission by the committee on style.

Recommendation of Change in Substance.

Omit this section.

Prior to the recent war and the consequent great increase in government securities which are proper trust investments, it was practically impossible for a trustee to find legal trust investments. The condition may again occur, and your commission believe that the problem of trust investments should not be made the subject of constitutional enactment. The evil exist-prior to the adoption of the present constitution, of special legislation authorizing the securities of a particular corporation to be a legal trust investment, an evil which was in great part responsible for the provision in the present constitution, cannot again arise because of the prohibitions on special legislation.

If the action recommended is followed and the provisions of the present constitution omitted, until action by the general assembly, the rules of the common law as to such investments would prevent the investment in stocks, and only permit the investment in bonds where they were amply secured by a mortgage on property, the return of the principal being in no wise dependend on the success or failure of the business of the corporation.

On the question,

Will the committee adopt the section as reported?

The CHAIRMAN. There is a recommendation by the committee on style that this section shall be omitted.

On the question,

Will the committee agree to the recommendation of the Committee on style?

Mr. REED. Mr. Chairman: If we strike that out does that leave article III, section 22, in force

The CHAIRMAN. No, sir.

Mr REED. It does not?

Mr. CUYLER. It strikes it all out.

The CHAIRMAN. If this recommendation prevails it will be stricken out.

Mr. REED. We are amending the constitution; we are not making a new one. Now, if we do not amend that section, don't we leave it in force? It provides that "No act of the general assembly shall authorize the investment of trust funds" in the authorized stock of any corporation.

The CHAIRMAN. The recommendation of the committee on style is that the whole thing should come out of the constitution, this section 7-A, which was section 22 of article III of the present constitution, shall be omitted and there shall be no reference to this matter in the constitution.

Mr. REED. All right, sir, just so that it is clearly understood.

Mr. FISHER. Mr. Chairman: That being the condition, the legislature would have full and complete power to declare by law what would be legal investments for fiduciaries and savings banks.

The CHAIRMAN. That is correct; that is the thought of the committee.

Mr. GORDON. The recommendation of the committee might probably be tolerab'e, "No law shall authorize fiduciaries to invest in securities issued by a corporation except in bonds approved by an agency created by law," but to strike down all of this provision and leave it at the will of the legislature to authorize whatever investments it sees fit might result in very grave consequences to trust estates. Of course, it will not do for us to charge the legislature with evil methods or corrupt methods because it is a popular body, it is elected every two years, it is subject to fluctuation and public sentiment, and speculative prices are quite common in all communities. and in an evil day the legislature might authorize investments of trust funds in the stock of corporations of a certain character which it was desired to foster. I think that would be a dangerous power to put in the hands of the legislature. Stocks of the industrial corporations, for instance, whose life depends on so many contingencies, whose success is very often dependent upon the continuance of the man who creates them and whose prosperity passes away with him. The provision in the constitution which guards trust funds is a very wise one, and to enlarge it to the extent of allowing under the supervision of an executive agency such trust funds to be put in the bonds of private corporations, which come before stock, and which are an indebtedness, might be tolerable, as I said at the beginning; but I do thing it would be dangerous legislation to strike down all the provisions and leave it only to the will of the popular body.

Mr. CULYER. Mr. Chairman: We can only know by experience, and the experience is shown quite particularly in New York. In the state of New York the legislature is vested with full power to regulate the investment of trust funds. They have done it with eminent success for a great many years. They have from time to time issued standards of specific bonds for investment. They make a thorough study of the subject, and I do not believe there is any state in the Union where the trust investments are safer to the cestui que trust and made with a better return than they are in New York. I think

it is a very serious thing to hamper trustees by constitutional provision in making investments. Until very recently the trustees had greater latitude and greater power because the investments themselves were broader in their nature than they are in Pennsylvania. I think that the proposal to leave it to the legislature is a very wise one.

Mr. REED. Mr. Chairman: There is no provision under the head of local and special laws that would prohibit, if this were stricken out, the legislature from passing special laws in regard to investment in bonds of particular corporations, as I understand it.

Mr. GORDON. Or stocks of particular corporations.

Mr. REED. There is no restriction on special legislation for that purpose, so that it seems to me it would be a good deal wiser to adopt section 7-A than to leave it without any provision, in which I differ from my eminent friend.

Mr. FISHER. This is a provision which we also discussed quite fully when it was up before. As I recall it, our report does not express what was in the minds of the commission or what I thought was in the minds of the commission. We speak about the limitations that the present constitution places upon this kind of investments, and it was the understanding that we would liberalize it by broadening those limitations so as to grant permission to invest in the bonds of private corporations such as might be approved by an agency to be created by law. I never understood that we were striking down these limitations. Now, it seems to me, with all deference to Mr. Cuyler's opinion, that there ought to be some constitutional restrictions upon the kind of investments which fiduciaries and savings banks are permitted to make. Savings banks are the depositories of the people of moderate means. They have done a great deal to encourage thrift among our working classes. Now, if there is a large latitude in making investments of funds which stay in a bank often for many years, there is danger from unwise investment. There is danger of pressure being brought to invest in certain kinds of securities under certain conditions. I can say to this Commission just now that there is a great deal of agitation on the part of real estate men the country over to force investment by savings banks and other institutions in real estate securities of one kind or another, with this idea, that this sort of investment will help to remedy housing conditions. They think altogether of that phase of the problem. Suppose these extraordinary conditions pass away. Suppose that the inflated conditions which exist in regard to real estate subside and there is a depression and fall in value of those securities, that would lead to a very serious situation. It seems to me that we ought to retain some provision, some restriction and limitation on this kind of investment. I would be willing to liberalize by adding such securities as might receive the approval of some proper body which would be instituted for that purpose; but to strike down all limitations, I certainly would be opposed.

Mr. CUYLER. Mr. Chairman: What is the result in Pennsylvania today? There are trust companies in Philadelphia having hundreds of thousands of dollars waiting for investment. They can not find investments because in making investments they can get only two and one-half per cent return to the cestui que trust. It is a positive

detriment to this state. I think you can afford to make some adjustment on it. There are few states in the Union that do not grant that power to the legislature.

The CHAIRMAN. Would not the effect of the adoption of section 7-A be to very greatly liberalize investments and almost make it a legislative matter, that is, the legislature would create an agency which would approve the securities for trust investments? That is what the chair understands.

Mr. GORDON. May I ask, Mr. Cuyler, do you mean the moneys of the trust company or do you mean the funds of which they are trustee?

Mr. CUYLER. It is the trustee. I think it is very difficult to get real estate mortgages to any extent in Philadelphia, and in so far as investments in bonds are concerned, a return of two and one-half or three per cent. is the rule.

Mr. GORDON. There are bonds of the United States.

Mr. FISHER. This section 7-A I think does not express the intention of this commission. It says, "No law shall authorize fiduciaries to invest in securities issued by a corporation except in bonds approved by an agency created by law." Is that what we want to say? The law must set up an agency for the purpose of passing on these securities before a fiduciary can find any sort of investment. That is prohibitive in character.

Mr. CUYLER. Would not the legislature be just as good an agency as a specially created agency? The legislature represents every corner of the state.

Mr. FISHER. Mr. Chairman: May I suggest that we pass on section 7-A first and then take up later as a separate question whether we shall adopt section 3 of article III with a modification?

Mr. GORDON. Is "security" just the word there anyhow? It says, "No law shall authorize fiduciaries to invest in securities issued by corporations except in bonds approved by an agency created by law." Now, the existing constitution says, "No act of the general assembly shall authorize the investment of trust funds by executors, administrators, guardians or other trustees, in the bonds or stock of any private corporation." Now, it is changed the words "securities of a corporation" are used. I do not think that is a good term.

Mr. FISHER. It might mean both stocks and bonds. It may mean acceptances; it might mean a variety of things.

The CHAIRMAN. There is a provision against investment in securities of that kind. The only securities that could be invested in would be bonds approved by an agency created by law.

Mr. FISHER. That is the effect.

Mr. CUYLER. Take for instance the car trust. There is no safer or better security than the car trust, and yet I think under the law of Pennsylvania an executor or trustee could not invest in the car trust, and yet nothing could be better as experience shows.

Mr. FOX. Mr. Chairman: Might I ask what the section was originally adopted by the commission?

The CHAIRMAN. The secretary will answer.

The secretary read the section as follows:

No act of the general assembly shall authorize the investment of trust funds by executors, administrators, guardians or other trustees in the stock of any private corporation nor in private corporate bonds not approved by some authority empowered by the legislature to pass upon issues of bonds. Such acts now existing are avoided, saving investments heretofore made.

Mr. FOX. Mr. Chairman: I move that that be adopted in lieu of section 7-A.

Mr. GORDON. There again, Mr. Chairman, the committee on style has destroyed the section as adopted by this commission. The commission's section was an absolute prohibition upon the investment of trust funds in the stock of corporations, but permitted the investment in the bonds of a corporation if approved by an executive agency. Am I not correct in that statement?

The CHAIRMAN. Yes, and that is what section 7-A does.

Mr. GORDON. I do not think it does. Stock is not a security. It does not have any prohibition against the investment in the stock of a corporation, and the section adopted by this commission did contain that prohibition.

The CHAIRMAN. I do not read it as Judge Gordon does.

Mr. REED. What section was that, Mr. Secretary, that you read.

The SECRETARY. The section which I read was the section in the language adopted by the commission.

Mr. REED. Where is that?

The SECRETARY. It is on page 76, section 22 of article III of the second draft dated May 20, 1920.

Mr. GORDON. Certainly the committee on style has altered that section very materially.

The CHAIRMAN. I do not so understand it, Judge Gordon, because the section here provided. "No law shall authorize fiduciaries to invest in securities issued by corporations." so that they cannot invest in any securities "except in bonds approved by an agency created by law." That is that section boiled down. But I do not have any pride in it at all, I am entirely willing to accept the section as it was adopted heretofore by the commission, which would limit the investment to bonds only.

Mr. REED. If you change that word "security" to "bonds" you will have practically the same thing.

The CHAIRMAN. I do not think so, Judge Reed; I think then you might invest in stocks.

Mr. GORDON. I must disagree with the chairman and with the committee on style. If this section were passed as it stands now there would be no prohibition against the legislature's authorizing the investment of trust funds in stocks of corporations, none.

Mr. McCORMICK. Stock is not security issued by a corporation.

The CHAIRMAN. If you substitute the word "security" for stock or bonds—

Mr. GORDON. I will agree to that.

Mr. FISHER. I was going to make a motion to amend by inserting in line 2, after the word "in" the words "stocks, bonds and other," so as to read "to invest in stock, bonds and other securities issued by a corporation."

Mr. GORDON. I will agree to that, sir.

Mr. KELLY. Would not that be open to this objection, that the legislature might pass a law authorizing fiduciaries to invest in stocks, bonds or securities issued by a limited partnership, or some-

thing of that kind? That might be very much worse than the securities issued by a corporation. In other words, the prohibition has only to do with stocks and bonds and other securities issued by corporations.

The CHAIRMAN. That is the wording in the present constitution.

Mr. FISHER. Insert the words "stocks, bonds or other" before the word "security" in the second line. I offer that as an amendment.

Mr. GORDON. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE III, SECTION 26-C.

Mr. REED. Mr. Chairman: I want to ask permission to amend article III, section 26-C. This was taken up this morning and the secretary was to formulate the words, that is the act in regard to fixing a rate of interest. There was to be added to that "except that law may be enacted permitting classes of associations and corporations to pay a higher rate of interest than individuals." You will remember that the criticism was that it was a question of special legislation.

The CHAIRMAN. Yes, it was to amend line 21 of section 26-C of article III.

RECONSIDERATION OF VOTE

Mr. REED. Mr. Chairman: I move that the vote by which section 26-C of article III was adopted be reconsidered.

Mr. FOX. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE III, SECTION 26-C.

The committee resumed consideration of section 26-C of article III.

On the question recurring,

Will the committee agree to the section?

Mr. REED. Mr. Chairman: I move to amend by adding after line 16 the following: "except that laws may be enacted permitting classes of associations and corporations to pay a higher rate of interest than individuals."

Mr. FOX. Mr. Chairman: I second the amendment.

On the question,

Will the committee agree to the amendment?

Mr. REED. It was practically passed this morning, but it was not put in shape. I would like to get it passed.

On the question recurring,

Will the committee agree to the amendment?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE V, SECTION 11.

Mr. FOX. Mr. Chairman: I have a similar amendment to offer. We actually passed on it this morning, but the secretary asked me, in order to make the records straight, to introduce an amendment to article V, section 11.

RECONSIDERATION OF VOTE.

Mr. FOX. Mr. Chairman: I move that the vote by which section 11 or article V was adopted be reconsidered.

Mr. KELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE V, SECTION 11.

The committee of the whole resumed the consideration of section 11 of article V.

On the question recurring,

Will the committee agree to the section?

Mr. FOX. I move to amend by inserting in line 31, after the word "exist" a new sentence as follows: "In such event a justice of the peace may appeal to the superior court."

Mr. KELLY. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE V, SECTION 4.

The CHAIRMAN. Ought not the same amendment be made after "justices of the peace in Philadelphia" in section 4 of article V? There is a similar provision there.

The secretary informs me that it is covered there in the same way.

COMMITTEE OF THE WHOLE RISES.

The committee of the whole then rose and the Chairman reported progress.

ADJOURNMENT.

Mr. REED. Mr. Chairman: I move that the commission do now adjourn, until 9.30 o'clock tomorrow morning.

Mr. FOX. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 10.15 o'clock P. M. the commission adjourned until 9.30 o'clock tomorrow morning.

Senate Chamber,

Wednesday, November 10, 1920.

The Commission met at 9.30 o'clock A. M.

The Chairman, William I. Schaffer, in the chair.

The CHAIRMAN. The hour fixed for the meeting of the commission having arrived, the commission will be in order.

ROLL CALL.

The roll was called by the secretary and was as follows:

PRESENT—18.

Cuyler, English, Fisher, Fox, Gordon, Kelly, McCormick, Miller, Munce, Perrine, Pinchot, Reed, Stackpole, Stevens, Sulzberger, Thorpe, Tyson, Schaffer (Chairman).

ABSENT—7.

Alter, Carson, Connelly, Pepper, Smith, Voll, Warburton.

The CHAIRMAN. A majority of the commission being present as disclosed by the call of the roll, the commission will proceed with its business.

JOURNAL APPROVED.

Mrs. MILLER. Mr. Chairman: I move that the reading of the Journal be dispensed with and the journal approved.

Mr. REED. Mr. Chairman: I second the motion.

The motion was agreed to.

RESOLUTIONS.

Mr. FISHER. Mr. Chairman: I desire to offer the following resolution and move its adoption:

The resolution was read by the secretary as follows:

Resolved, That the committee on style be directed to prepare and submit to the commission a draft of a report to the general assembly.

On the question,

Will the committee adopt the resolution?

Mr. THORPE. Is that the report of the commission as a whole for comment and criticism

The CHAIRMAN. The chair would say that the chair's thought is to prepare a report and send it to the commissioners in advance of the next hearing so that the commission can have an opportunity to look it over.

On the question recurring,

Will the committee adopt the resolution?

It was adopted.

Mr. FISHER. Mr. Chairman: I offer the following resolution:

The resolution was read by the secretary as follows:

Resolved, That the secretary be directed to prepare and have printed the text of the constitution as adopted at this week's session, and in parallel columns, the text of the corresponding sections of the present constitution, the sections adopted by the committee at its sessions beginning May 11, and the sections as reported by the committee on style.

The words and expressions set forth in exhibit "A" on page 8 of the report of the committee on style shall be regarded as having been employed in all amendments and substitutes.

On the question,

Will the committee adopt the resolution?

Mr. TYSON. Mr. Chairman: Does that provide for the printing of the constitution as approved this week?

The CHAIRMAN. Yes, sir.

Mr. TYSON. Or as reported to us?

The CHAIRMAN. Both ways, as reported and as approved this week, as voted upon in the sessions that began May 11th and the printing of the constitution of 1874, so that at a glance —

Mr. TYSON. Then it would make four columns?

The CHAIRMAN. Four columns, yes.

Mr. TYSON. It seems to me that would be hardly necessary. If we have the constitution as approved this week, we would hardly need the report of the committee on style.

The CHAIRMAN. What is the thought of the commission as to that? It would seem to the chair there is something in that suggestion.

Mr. GORDON. I agree with the gentleman. When we acted on the report of the committee on style, that is the end of the committee on style.

The CHAIRMAN. I think that is true, and the resolution will be considered as amended in that respect, the report to consist of three columns, the constitution of 1874, the sections as voted upon and adopted by the committee of the whole in the meetings beginning May 11th, and as they have been adopted this session.

The secretary read the resolution as amended:

Resolved, That the secretary be directed to prepare and have printed the text of the constitution as adopted at this week's session, and in parallel columns, the text of the corresponding sections of the present constitution, and the sections adopted by the committee at its sessions beginning May 11.

The words and expressions set forth in exhibit "A" on page 8 of the report of the committee on style shall be regarded as having been employed in all amendments and substitutes.

On the question,

Will the committee adopt the resolution as amended?

It was adopted.

COMMITTEE OF THE WHOLE.

The commission then resolved itself into the committee of the whole, William I. Schaffer, Chairman.

ARTICLE IX, SECTION 4.

Mr. PINCHOT. Mr. Chairman: I move that the vote by which section 4 of article IX was adopted be reconsidered.

The CHAIRMAN. I second the motion.

The motion was agreed to.

On the question recurring,

Will the committee agree to the section?

Mr. PINCHOT. Mr. Chairman: I believe this wording accomplishes exactly what was intended yesterday by the commission. This is an amendment to section 4 of article IX by adding at the end of the section, leaving the present wording as it stands, the following: "Except that the adoption of this constitution by the electors shall be taken to authorize the general assembly to provide for the issuance of bonds for forest purposes not in excess of three million one hundred twenty-five thousand dollars annually for eight years." I move the adoption of this amendment.

The CHAIRMAN. I think I seconded the amendment yesterday and I will second it again today.

On the question,

Will the committee agree to the amendment?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

The CHAIRMAN. It occurs to the chair that it might be well, so that we shall not get too large a deferred calendar, to act on all sections that were postponed yesterday. I understand that amendments have been prepared to take care of them.

ARTICLE III, SECTION 15.

The committee of the whole resumed consideration of article III, section 15 as reported by the committee on style.

The secretary read the section as follows:

BUDGET AND APPROPRIATION BILLS.

1 Section 15. The governor shall submit to the general assembly a budget on or
2 before March 1 of each year in which it shall be in regular session. The budget
3 shall contain a complete plan of proposed appropriations and complete estimates
4 of the revenues and funds available for appropriation for the two ensuing fiscal
5 years, including appropriations for charitable, educational and benevolent pur-
6 poses.
7 When the governor presents the budget to the house of representatives, he
8 shall submit a general appropriation bill containing the proposed appropriations
9 for the fiscal years covered by the budget and may also submit any bill embodying
10 recommendations as to sources of revenue.
11 The presiding officer of the house of representatives shall immediately cause
12 such bills to be introduced.
13 The general assembly may increase, decrease, strike out or otherwise alter
14 any item in the general appropriation bill, or may add new items thereto.
15 Until the general appropriation law has been enacted neither house shall con-
16 sider an appropriation bill other than the general appropriation bill unless the
17 appropriation shall be solely for the immediate needs of the general assembly
18 or unless the governor shall request the general assembly to act upon the bill
19 in advance of the general appropriation bill.
20 After the general appropriation law has been enacted, no appropriation shall
21 be made for any purpose, object or item included therein or in the general appro-
22 priation bill as submitted by the governor, unless the governor shall request the
23 general assembly to pass a bill making such appropriation.
24 The general assembly shall not finally adjourn for ten days after all appro-
25 priation bills have been presented to the governor.

On the question recurring,

Will the committee adopt the section as reported?

The CHAIRMAN. I understand Mr. McCormick has an amendment to this section.

Mr. McCORMICK. Mr. Chairman: I would like to add at the end of the first paragraph, after line 6, the following: "In submit-

ting proposals for appropriations to charitable, educational or benevolent institutions not under the absolute control of the commonwealth, the governor shall at the same time submit a plan of distribution among the classes of institutions to be benefited."

Mr. KELLY. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the committee adopt the section as amended?

It was adopted.

ARTICLE IV, SECTION 8.

The committee of the whole resumed the consideration of section 8 as reported by the committee on style.

The secretary read the section as follows:

APPOINTING POWER.

1 Section 8. The governor shall appoint a secretary of the commonwealth, an
2 attorney general and a secretary of internal affairs to serve during his pleasure,
3 and other officers as prescribed by law.
4 When the senate is in regular session, except within ten days before final
5 adjournment, the governor shall exercise the power to appoint an officer only
6 after nomination to the senate and by and with the advice and consent of a
7 majority of its members.
8 The governor may fill by appointment a vacancy in an office to which he may
9 appoint. If he shall appoint to an appointive office during a recess of the senate
10 or within ten days before final adjournment of a regular session thereof, such
11 appointment shall be valid until the end of the next regular session of the
12 senate, and the person so appointed shall be deemed to have been rejected by the
13 senate at such session unless nominated by the governor and confirmed by the
14 senate.
15 The governor may fill by appointment a vacancy in the office of auditor gen-
16 eral, state treasurer and in any other elective office which he may be authorized
17 to fill. Such vacancy shall be filled by election on the next election day appro-
18 priate to the office which shall fall not less than sixty days after the occurrence
19 of the vacancy. An appointee to fill a judicial vacancy shall serve until the
20 first Monday of January after such election. Any other appointee shall serve
21 until the person so elected shall take office as prescribed by law.
22 If a power of appointment to an appointive or elective office shall arise during
23 a session of the senate and not within ten days before final adjournment, the
24 governor shall, at such session, nominate a proper person for the office. If a
25 power of appointment to an appointive office shall arise within ten days before
26 final adjournment of a session of the senate or during a recess of the senate,
27 he shall, at the next session of the senate nominate a proper person for the
28 office. In either case, if the senate shall reject a nomination and shall notify
29 the governor that it will not adjourn within ten days, he shall nominate another
30 person for the office. If he shall fail to nominate as herein required, he shall
31 not appoint to the office except after nomination to the senate and by and with
32 the advice and consent of a majority of its members.
33 If the nomination of a person to an office shall be rejected by the senate he
34 shall not be appointed to such office before the next session of the senate.
35 In acting on executive nominations, the senate shall sit with open doors.
36 The vote shall be taken by yeas and nays and shall be entered on the journal.

On the question recurring.

Will the committee adopt the section as reported?

Mr. REED. Mr. Chairman: As I said yesterday, the amendment suggested was that we strike out on lines 4 and 5 the words "When the senate is in regular session, except within ten days before final adjournment, the governor." I think the idea was to strike out on line 4 the words "within ten days before final adjournment" and to insert after the words "members" on line 7 the words "where he shall appoint to fill a vacancy occurring within ten days before the final adjournment of the session." I should like the secretary to read that amendment.

The SECRETARY. The amendment is as follows:

Strike out of lines 4 and 5 "except within ten days before final adjournment."

Strike out of line 7 the period and insert a comma; add after "members", "except where he shall appoint to fill a vacanacy occurring within ten days before final adjournment of the session."

Mr. REED. I suppose that is to show that a vacancy and not the appointment occurs within ten days. Then there is another amendment.

The SECRETARY. The other amendments are:

In line 10 insert after "or" "to fill a vacancy occurring."
In line 30, strike out "shall" and insert "may."

Mr. REED. Mr. Chairman. I move the adoption of the amendment just read by the Secretary.

Mr. McCORMICK. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question,

Will the committee adopt the section as amended?

It was adopted.

ARTICLE IV, SECTION 13.

The committee of the whole resumed the consideration of section 13 as reported by the committee on style.

The secretary read the section as follows:

VACANCY IN GOVERNORSHIP.

1 Section 13. If the office of governor shall be vacant the lieutenant-governor
2 shall become governor. If the governor shall fail to qualify or shall be under
3 a disability, the powers, duties and emoluments of his office until the end of the
4 governor's term or until he shall qualify or his disability shall be removed shall
5 devolve on the lieutenant-governor, or, if such person shall not be in office or
6 shall be under a disability, then on the secretary of the commonwealth, or, if his
7 office shall be vacant or he shall be under a disability, then on the attorney
8 general.

On the question recurring,

Will the committee adopt the section as reported?

Mr. REED. Mr. Chairman: This was handed to me. I don't know whether I was responsible for it or not. I move to strike out lines 5 to 8 all after the word "or" and insert "if his office shall be vacant or he shall be under a disability, then on the president pro tempore of the senate, or if his office shall be vacant or he shall be under a disability, then on a persons elected by a majority of the members of the general assembly. For the purpose of such election the general assembly may convene in special session without a proclamation of the governor."

It occurs to me there ought to be some provision by which the general assembly could come together either by a call signed by a certain number of members or in some other way. You can not have them all meeting without somebody starting it.

The CHAIRMAN. May I suggest that they be called together by the speaker of the house?

Mr. REED. There might not be a speaker.

Mr. SULZBERGER. As an alternative, or by the call of a certain number of the members.

Mr. REED. Well then, the sentence could read, "For the purpose of such election the general assembly may convene in special session

without a proclamation of the governor on a call signed by the speaker or by twenty-five members of either house." Is that enough?

Mr. SULZBERGER. Twenty-five is too many. Ten would probably do.

Mr. REED. Then "upon call of the speaker," or will there be a speaker?

The CHAIRMAN. There might not be.

Mr. REED. Suppose we leave the speaker out, he may not be speaking at that time, and make it read "upon a call signed by five members of either house." That would make ten in all.

Mr. SULZBERGER. Mr. Chairman: I second the amendment.

The CHAIRMAN. The secretary will read the amendment as it now stands.

The secretary read the amendment as follows:

> Strike out in lines 5 to 8 all after "or" and insert: "if his office shall be vacant or he shall be under a disability, then on the president pro tempore of the senate, or if his office shall be vacant or he shall be under a disability, then on a person elected by a majority of the members of the general assembly. For the purpose of such election the general assembly may convene in special session without a proclamation of the governor upon the call signed by five members of the house."

On the question,

Will the committee agree to the amendment?

It was agreed to.

On the question,

Will the committee adopt the section as amended?

It was adopted.

ARTICLE IV, SECTION 14.

The committee of the whole resumed the consideration of section 14 as reported by the committee on style.

The secretary read the section as follows:

VACANCY IN LIEUTENANT GOVERNORSHIP.

1 Section 14. If the office of lieutenant governor shall be vacant or if he shall
2 fail to qualify or shall be absent or under a disability, the powers, duties and
3 emoluments of his office, except the right to succeed to the office of governor,
4 shall devolve on the president pro tempore of the senate for the remainder of
5 the lieutenant governor's term or until his disability be removed.

On the question recurring,

Will the committee adopt the section as reported?

Mr. REED. The amendment as proposed is to strike out of line 3 the words "except the right to succeed to the office of governor" and add the words "In such event the seat of the president pro tempore of the senate shall become vacant."

Mr. KELLY. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the committee adopt the section as amended?

It was adopted.

ARTICLE IV, SECTION 5-C.

The committee of the whole resumed the consideration of section 5-C as reported by the committee on style.

The secretary read the section as follows:

TERM OF GOVERNOR.

1 Section 5-C. The governor shall hold office for four years from the third
2 Tuesday of January succeeding his election or until his duties shall devolve
3 by law on another. A person elected governor shall not be eligible for the
4 succeeding term.

On the question recurring,

Will the committee adopt the section as reported?

Mr. REED. Mr. Chairman: I move to amend by striking out in lines 2 and 3 the words "his duty shall devolve by law on another" and insert the words "his successor shall qualify."

Mr. FOX. Mr. Chairman: I second the amendment.

The amendment was adopted.

On the question,

Will the committee adopt the section as amended?

It was adopted.

ARTICLE III, SECTION 18-A.

Mr. THORPE. Mr. Chairman: May I call up another matter? In section 18-A of article III, the use of the word "dependent" before the word "person" was objected to, and in lieu thereof this has been suggested, for "the payment to funds under public control for the benefit of classes of persons entitled to public assistance." In section 18-A of article III, "Certain Appropriations Permitted," the committee suggested the insertion on line 5 after the word "coal" the words "for the payment to funds under public control for the assistance of classes of dependent persons." The word dependent might be offensive to some of the recipients, and to avoid that I think this was suggested "for the benefit of classes of persons entitled to assistance." I move that amendment to this section.

Mr. GORDON. Mr. Chairman: I second the amendment.

On the question,

Will the committee agree to the amendment?

Mr. SULZBERGER. What calamity would there be if in consequence of their pride they refuse to receive it? I think the state would benefit.

Mr. REED. Does it mean legally entitled to assistance?

On the question recurring,

Will the committee agree to the amendment?

It was agreed to.

ARTICLE IV, SECTION 17-A.

Mr. THORPE. There was one other matter that was left over, article IV, section 17-A, I think this is new matter and could be inserted were it desired. I read this Mr. Chairman, merely as a voice.

Amend article IV by inserting as a new section, to be section 17-A, "The attorney general, auditor general, state treasurer and the commissioner of education shall exercise the powers and perform the duties prescribed by law."

Mr. FOX. Mr. Chairman: I second the amendment.

On the question,

Will the committee agree to the amendment?

Mr. GORDON. I do not know what its purpose is, but its effect would probably be to confine the duties of the attorney general and

the auditor general to statutory duties only. The attorney general, as all know, performs a number of duties which he derives from the common law that are inherent in his office. This would seem to strike this out and make him dependent entirely upon statute for his power. So too this is unnecessary amendment as all these officers would have to perform duties prescribed by law anyhow. I therefore can see no good from this, but I can see much evil. I would like the proponent of it to tell why he desired it passed.

Mr. THORPE. The Judge is too insistent; there is no reason for passing it whatever.

The CHAIRMAN. The suggested amendment is withdrawn.

ARTICLE III, SECTION 18-A.

Mr. GORDON. I would like to renew the amendment which Doctor Thorpe suggested to eliminate the word "dependent," which some members seem to like, and on reflection I believe it could be improved upon. Insert these words "for the payment to funds under public control for the benefit of classes of persons who are to be the recipients of public assistance."

Mr. SULZBERGER. All you need to do is substitute for "assistance" "charity," and then you will have it complete.

Mr. THORPE. Mr. Chairman: I second the amendment.

On the question,

Will the committee agree to the amendment?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE IV, SECTION 8.

The CHAIRMAN. My attention has been called to section 8 of article IV, providing for the appointment by the governor of the commissioner of education. In the recommendations to this section there is a recommendation to strike out on line 2 the word "and" and insert a comma insert after "affairs" on line 2 "and a commissioner of education" and to strike out the last two sentences in paragraph 4 and insert "Such appointees shall serve until the person so elected shall take office as prescribed by law." The chair will entertain a motion for the adoption of the first amendment.

Mr. FOX. Mr. Chairman: I move to insert after "affairs," on line two, "and a commissioner of education" in section 8 of article IV.

Mr. FISHER. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the committee agree to the section as amended?

Mr. FOX. Mr. Chairman: I move to strike out the last two sentences of paragraph 4, lines 19 to 21, and insert "such appointee shall serve until the person so elected shall take office as prescribed by law."

Mr. FISHER. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE IV, SECTION 14-A.

The committee of the whole resumed consideration of section 14-A as reported by the committee on style.

The secretary read the section as follows:

DETERMINATION OF DISABILITY.

1 Section 14-A. The fact of disability of the governor or of a person who
2 would otherwise be entitled to hold or assume the office of governor or the fact
3 of disability of the lieutenant governor shall be determined only by the supreme
4 court on the address of the general assembly agreed to by a majority of the
5 members of each house, or, if the general assembly be not in session, on the
6 written address of such majority.

On the question recurring,

Will the committee adopt the section as reported?

The CHAIRMAN. There was some question raised as to that section by someone saying that the section has not been adopted. The secretary informs me that his records show that this section was not adopted. The amendment provides that the supreme court shall be the "only" judges of the disability of the governor.

Mr. FISHER. I was not here when this was up for discussion, but I assume that the question arose in the minds of some of the members of the commission relating to persons who would otherwise be entitled to hold the office of governor. It would seem that anyone who might be designated as a possible successor of the governor would fall in this field although they would never assume the office of governor. I am not sure that our committee on style had that thought in mind.

The CHAIRMAN. If those words were stricken out it would meet the situation.

Mr. FISHER. Mr. Chairman: I move to strike out those words and limit the provisions to the disability of the governor or the lieutenant governor. That is, strike out "or of a person who would otherwise be entitled to hold or assume the office of governor."

Mr. McCORMICK. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XII, SECTION 3-B.

The committee of the whole resumed the consideration of section 3-B as reported by the committee on style.

The secretary read the section as follows:

INCOMPATIBLE OFFICES.

1 Section 3-B. No person shall be a member of the general assembly or shall
2 hold under the state government or under a municipality, an office or place of
3 trust or profit in respect of which he shall receive compensation, except that of
4 attorney at law or in the militia, if he
5 (a) Is a member of the congress;
6 (b) Holds an office or place or trust or profit under the United States;
7 (c) Holds, in addition, the office of governor, of lieutenant governor, or of a
8 judge learned in the law;
9 (d) Has, in addition, become a member of the general assembly, and the term
10 for which he was elected has not expired.

11 A judge learned in the law shall not hold an office of trust or profit under
12 another state or under a municipality thereof.
13 No person shall serve as an election officer who shall, within two months,
14 have been a member of the congress or of the general assembly or have held an
15 office or place of trust or profit under the United States or under the state
16 government or under a municipality, save only the office of justice of the peace
17 and of notary public and office in the militia.
18 Laws may be enacted declaring what other offices or places of trust or profit
19 are incompatible with each other or with membership in the general assembly.

RECOMMENDATION OF CHANGE IN SUBSTANCE.

Alter to read:

"No person shall be a member of the general assembly or shall hold under the state government or under a municipality, an office or place of trust or profit in respect of which he shall receive compensation, except that of attorney at law, or in the militia, if he

(a) Holds, in addition, an office or place of trust or profit under the United States, the state government, a municipal government, the state or a municipal government of any other state, or is a member of the congress or of the legislature of any other state.

(b) Has, in addition, become a member of the general assembly, and the term for which he was elected has not expired.

Laws may be enacted declaring what other offices or places of trust or profit are incompatible with each other or with membership in the general assembly."

On the question recurring,

Will the committee adopt the section as reported?

The CHAIRMAN. The commission will recall that the question was whether to adopt the section as it appears under the head, "incompatible offices," or to adopt the section as recommended by the committee on style. Judge Reed raised the pertinent question that under the section as proposed there could not be the same borough engineer for a number of municipalities. In my county one man serves as borough engineer for a great many.

Mr. FISHER. Mr. Chairman: I move the adoption of the section recommended by the committee on style.

Mr. REED. Mr. Chairman. I second the motion.

On the question,

Will the committee adopt the substitute?

Mr. REED. The main crisis was that you could not be attorney general and borough solicitor at the same time.

The CHAIRMAN. I think that was a minor matter, Judge Reed. If the words, "or under a municipality," were stricken out in the draft recommended by the committee on style that difficulty would be obviated.

Mr. REED. Mr. Chairman: I move to strike out those words.

Mr. FISHER. Mr. Chairman: I second the amendment.

On the question,

Will the committee agree to the amendment?

It was agreed to.

On the question,

Will the committee agree to the substitute as amended?

It was agreed to.

Mr. SULZBERGER. I would like to understand what virtue there is in clause B of that proposed section. I do not quite understand it.

The CHAIRMAN. The secretary informs me that it follows the present constitution preventing a man who is a member of the general assembly creating an office and then filling the office, and they are the words of the present constitution.

Mr. McCORMICK. Would you not have to strike out "municipal government" in clause (a).

The CHAIRMAN. Yes, I think so. The chair is perfectly willing to state that this subject, "incompatible offices," is one that I am in some doubt about. Now, I think the safe thing to do, if I may offer the suggestion, would be to study the question between now and the next meeting and instead of adopting this recommendation of the committee on style, that has been studied under a certain aspect of things, adopt the section as it is reported, which is a gathering together of all the provisions of the constitution, and give that further study, to see if everything is included that ought to be there.

RECONSIDERATION OF VOTE.

Mr. FISHER. Mr. Chairman: I move that the vote by which the section recommended by the committee on style was adopted be reconsidered.

The motion was agreed to.

The CHAIRMAN. Now, if the motion is made to adopt the section as drafted by the committee, which is a gathering together, as the chair understands this, of the widely scattered provisions of the present constitution, then we will have all that before us for study and consideration before the next meeting.

Mr. FISHER. Mr. Chairman: I move to adopt the section as reported.

Mr. REED. Mr. Chairman: I second the motion.

On the question,

Will the committee adopt the section as reported?

Mr. SULZBERGER. Mr. Chairman: I still do not understand why a member of the general assembly should become incompetent because he is a member of the general assembly. He might become incompetent for something else, but I do not see how he becomes incompetent for that.

The CHAIRMAN. I will ask the secretary to explain the section.

The SECRETARY. The present constitution prevents, and, of course, section 3-B, which is a section of the present constitution, prevents, a law being passed creating an office and, before the expiration of his term, a member of the general assembly resigning and being appointed to that office. That is the provision in the present constitution.

Mr. SULZBERGER. Mr. Chairman: Is there anything in the present constitution like the first line of section 3-B, by which you couple together the first and second lines. "No person shall be a member of the general assembly or shall hold office under the state government?" Is not your coupling of alternatives liable to produce confusion in the mind as to the capacity of the person becoming a member of the general assembly when he is elected a member of the general assembly?

The SECRETARY. I assume that the answer to that, sir, is that on line nine the words "in addition," are added, so that the clause reads, "has in addition become a member of the general assembly, and the term for which he was elected has not expired."

Mr. REED. If you read the first line, "No person shall be a member of the general assembly" and if he "has in addition become a member of the general assembly, and the term for which he was elected has not expired," what does that mean? That is the Judge's criticism.

Mr. KELLY. I wonder if it was intended to refer to the member of one house, say the house of representatives, who might become a member of the senate. It seems to me to cover that situation. I do not know whether it was intended to or not.

The CHAIRMAN. We will be on safe ground to substitute the provisions of the present constitution for this section. They could all be put together in one section, then we would be on safe ground in the language.

Mr. SULZBERGER. I did not study that section, and therefore I do not know anything about it.

I move that the sections of the present constitution in their exact language be substituted for this section.

Mr. KELLY. Mr. Chairman: I second the motion.

It was agreed to.

BILL OF RIGHTS.

Mr. REED. I have this suggestion to make with reference to section 8 of article XVI, "property taken, injured or destroyed for public use." That has been transferred to article 1. Now, if you transfer that back to article XVI, and if you take out the sentence added at the end of the first section of article 1, and put section 10-A back in section 10 of article I, you will then have your Declaration of Rights without any change, and we can report that the Declaration of Rights has not been changed. The report of the committee to take the words out of section 10 of article 1, "nor shall private property be taken or applied to public use without authority of law and without just compensation being first made or secured." and then attach that to section 1, propably is good drafting, but you would have one change and one amendment to vote on. Now, if you will restore to this article the provision that has been transferred to section 10-A of article I, you will then have your Declaration of Rights intact. "Private property shall not be taken, injured or destroyed nor applied to public use without authority of law and without just compensation being first made or secured," and then follow, a "corporation shall make just compensation," which really follows.

Mr. GORDON. Transfer that clause?

Mr. REED. Transfer that whole clause in its entirety. That is where it was before.

The CHAIRMAN. The secretary suggests that it might be better, so far as arrangement goes, to transfer that to the article dealing with "public utilities."

Mr. REED. I do not care where you transfer it, wherever it is best.

The CHAIRMAN. Then the motion of Judge Reed is to take section 10-A out of the bill or rights and transfer it to the appropriate article in the constitution.

Mr. REED. I would transfer it to article XVII, that is "public utilities."

Mr. Fox. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. GORDON. Did not the bill of rights contain this clause "Nor shall private property be taken or applied to public use without authority of law and without just compensation?"

The CHAIRMAN. My recollection is that it did.

Mr. GORDON. Now if you do this you will have subtracted something.

Mr. REED. No, no.

The CHAIRMAN. The secretary wants to be sure that he has the amendment correct.

Mr. SULZBERGER. You do not mean to transfer the first paragraph of section 10-A.

Mr. REED. I am wrong about that.

Mr. SULZBERGER. Section 10-A, the first paragraph belongs where it is in the bill of rights.

The SECRETARY. The secretary understands that the motion as made will direct a transferrence of the first paragraph of section 10-A to the last part of section 10, restoring it to the exact language of the present constitution, and take the second paragraph of section 10-A and transfer it to an appropriate place in article XVII.

On the question recurring,

Will the committee agree to the amendment?

It was agreed to.

The CHAIRMAN. Is that correct, Judge Reed?

Mr. REED. That is correct.

Now as to the last sentence in the committee's draft, the last sentence of section 1 of article I, which is "No person shall be deprived of life, liberty or property without due process of law," I would move to restore it to section 9 of article I. That is where it belongs.

The CHAIRMAN. I do not think that is in the constitution at all.

Mr. REED. It ought to be in there then.

The CHAIRMAN. It was taken out of the bill of rights. It is part of the fourteenth amendment.

Mr. FISHER. The fourteenth amendment.

Mr. REED. But I thought that came from another section. Well, I want to strike that out.

The SECRETARY. It was originally in article IX, but as the language of article IX probably applies only to persons accused of crime in criminal proceedings and was in the constitution of 1874, in section 9 of the bill of rights, the last part thereof, and as the rest of that section applies only to criminal prosecution, the protection is probably limited to a person accused of crime.

Mr. REED. It is still in article IX of the committee's draft.

The SECRETARY. Yes, sir.

Mr. REED. So it has been duplicated.

The CHAIRMAN. So the motion or amendment, as I understand it, is to strike out this last sentence of section 1 of article I.

Mr. REED. Yes, sir.

The CHAIRMAN. Is that motion seconded?

Mr. FOX. Mr. Chairman: I second the amendment.

The amendment was agreed to.

The CHAIRMAN. The bill of rights, as the chair understands it, stands without change.

Mr. REED. That is the purpose.

ARTICLE XVI, SECTION 9.

The committee of the whole proceeded to the consideration of section 9 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

REGULATIONS OF CORPORATIONS ISSUING NOTES OR BILLS.

1 Section 9. A note or bill issued for circulation by a banking corporation
2 shall be registered and countersigned by an officer of the state government, and
3 its payment shall be secured by the deposit of security to the full amount
4 thereof with the auditor general. The method of registering, countersigning and
5 securing payment shall be prescribed by law.

NOTE.

Source: Article XVI, section 9:

"Every banking law shall provide for the registry and countersigning, by an officer of the state, of all notes or bills designed for circulation, and that ample security to the full amount thereof shall be deposited with the auditor general for the redemption of such notes or bills."

Changes in Substance: None.

Changes in Style: The words "banking law" in article XVI, section 9, of the present constitution, must be interpreted in a special technical meaning as denoting "a law regulating the issue by banks of bills and notes for circulation as money," or the section is meaningless. The wording of the section herein proposed avoids this necessity.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE XVI, SECTION 9-A.

The committee of the whole proceeded to the consideration of section 9-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

CORPORATE ELECTIONS.

1 Section 9-A. In elections for directors of a corporation each member or voting
2 stockholder may cast his votes for one candidate, or may distribute them upon
3 two or more candidates.

NOTE.

Source: Article XVI, section 4:

"In all elections for directors or managers of a corporation each member or shareholder may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates, as he may prefer."

Changes in Substance: None.

Clarifying Amendments: Article XVI, section 4, of the present constitution is worded as if there never was an agreement between stockholders that the holders of a certain class of stock were without voting power. In practice, stock without voting rights is issued and your Commission do not believe that the constitution should be so worded as to throw a doubt on the legality of the restriction. The re-wording of the section as herein suggested therefore expressly confines the right of cumulative voting to those members or stockholders who have voting rights.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

Mr. GORDON. Doctor Thorpe has made an admirable suggestion. He was a member of the committee on style. The section says that these votes may be cast for one candidate or may be distributed upon two or more candidates. I would suggest that the committee on style has made an error in style. That ought to be "among." You do not distribute things "upon" candidates, but you distribute them "among" candidates. I offer that as an amendment.

Mr. FISHER. The reason that was put in there was to follow the old constitution perhaps it is not good style. I second the amendment.

The amendment was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVI, SECTION 9-B.

The committee of the whole proceeded to the consideration of section 9-B as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

FOREIGN CORPORATIONS.

1 Section 9-B. A foreign corporation shall not do business without having in
2 the state a known place of business. In each place of business it shall have an
3 agent upon whom process may be served.

NOTE.

Source: Article XVI, section 5:

"No foreign corporation shall do any business in this state without having one or more known places of business and an authorized agent or agents in the same upon whom process may be served."

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

Special Note to the commission by the committee on style.

Recommendation of Change in Substance.

Strike out after "business," in line 2, the words "In each place of business it shall have an agent upon whom process may be served," and insert: "The secretary of the commonwealth shall be an agent of the corporation upon whom process may be served."

The existing statutory law (see act of June 8, 1911, L. 710) requires a foreign corporation doing business in the state to designate the secretary of the commonwealth as its agent upon whom process may be served. It does not require such corporation to designate an agent in its place or agents in its places of business. The present practice, irrespective of whether it conforms to the existing constitutional requirement, efficiently protects persons having claims against such foreign corporations which they desire to prosecute in the courts. The wording of the section suggested would make the constitutional requirement conform to a rule that has been proved to be satisfactory.

On the question,

Will the committee adopt the section as reported?

Mr. SULZBERGER. Mr. Chairman: I do not exactly see the improvement in style over the old provision. What is the reason?

The CHAIRMAN. The purpose of the suggested amendment was to make the secretary of the commonwealth the agent for all foreign corporations upon whom processes might be served. The chair might state from his own experience with concerns that have widely scattered plants in many sections of the country, that there is no one, under the act of 1915, upon whom service can be made; it has to be served on somebody at the plant. This amendment is to the effect that the secretary of the commonwealth be designated as agent for all foreign corporations upon whom papers may be served.

Mr. SULZBERGER. What I was alluding to was the rather vague and disputable meaning, "A foreign corporation shall not do business"—that may mean anywhere in the world, might it not? And if so, it may be the source of objection that it does business in some other states. The old constitution had the words, "No foreign corporation shall do any business in this state." But this excessive tenderness about style and repetition may be going too far.

The CHAIRMAN. "In this state" should be included after the word "business."

Mr. SULZBERGER. Mr. Chairman: I move to amend by inserting after the word "business" the words "in this state."

Mr. REED. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the committee agree to the section as amended?

Mr. CUYLER. Ought not the wording be, "The secretary of the commonwealth shall be the agent," not "an agent?"

The CHAIRMAN. It ought to be.

The CHAIRMAN. The amendment suggested by the committee on style is in line two, striking out "in each place of business it shall have an agent upon whom process may be served" and insert in lieu thereof "the secretary of the commonwealth shall be an agent of the corporation upon whom process may be served."

Mr. FISHER. I move that the amendment suggested by the committee on style be adopted.

Mr. CUYLER. I second the amendment.

On the question,

Will the committee agree to the amendment?

Mr. SULZBERGER. The proposition is that the corporations need not have any agents, but we force the secretary of the commonwealth on them as an agent.

The CHAIRMAN. Yes, sir.

Mr. SULZBERGER. It might be well to consider whether a question might not arise in the supreme court of the United States as to whether this is, in any reasonable sense, a notice. Where the accuser is identical with the accused there may be some doubt about the fairness of the decision as to the merits of the question.

The CHAIRMAN. It is legal under the law as it now is. Every foreign corporation must designate the secretary of the commonwealth as an agent for the acceptance of service or process, and I happen to be in a case myself now in which the question is whether the service of notice upon the secretary of the commonwealth is good.

Mr. SULZBERGER. It would be a good deal better I think, if you provide first for an agency by the corporation and, failing of appointment of a person as such agent, then service upon the secretary of the commonwealth. That I think would be fairer.

Mr. CUYLER. Does not that as a practical question involve a great deal of trouble to the litigant? For instance, if you have the alternative, he must first find out where the agent is. I think you will find, sir, that most states of the union have provided that the secretary of the commonwealth shall be the agent.

Mr. SULZBERGER. We do have that?

Mr. CUYLER. Yes, sir.

Mr. SULZBERGER. Very well, I withdraw my remarks.

On the question recurring,

Will the committee agree to the amendment?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVI, SECTION 9-C.

The committee of the whole proceeded to the consideration of section 9-C as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

COMMONWEALTH'S RIGHTS OF EMINENT DOMAIN.—POLICE POWER.

1 Section 9-C. The exercise of the right of eminent domain shall not be abridged
2 or so construed as to prevent the taking for public use of the property and fran-
3 chises of corporations. The exercise of the police power shall not be abridged
4 or so construed as to permit corporations to conduct their business in such man-
5 ner as to infringe the equal rights of individuals or the general well-being of
6 the commonwealth.

NOTE.

Source: Article XVI, section 3:

"The exercise of the right of eminent domain shall never be abridged or so construed as to prevent the general assembly from taking the property and franchise of incorporated companies, and subjecting them to public use, the same as the property of individuals; and the exercise of the police power of the state shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the state."

Changes in Substance: None.

Changes in Style: The words "the same as the property of individuals" have been omitted as unnecessary.

On the question,

Will the committee adopt the section as reported?

Mr. GORDON. Mr. Chairman: The change which seems to have been made in the present constitution is that the general assembly, under the old constitution will take public property or private property for public use, and that is omitted in the suggested amendment. The old article was, "The exercise of the right of eminent domain shall never be abridged or so construed as to prevent the general assembly from taking the property and franchise of incorporated companies and subjecting them to public use." The change in that respect in the proposed amendment is, "The exercise of the right of eminent domain shall not be abridged or so construed as to prevent the taking for public use of property and franchises of corporations." On its face it would seem that the power could be given to municipal corporations to take the franchise and property of corporations for public use, whereas, under the old constitution the general assembly only could do it. I was not here when there was any discussion on this amendment, and I do not know the reason for that change. I would like to hear the reasos for the change.

The CHAIRMAN. I think the thought was that this language meant the same thing, but I think there is something—

Mr. SULZBERGER. It eliminates the legislature; there is no doubt about that.

The CHAIRMAN. That thought did not occur to me, Judge Gordon, but I think there is something in it.

Mr. GORDON. Mr. Chairman: I move that we restore the constitution on this subject as it was.

Mr. SULZBERGER. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE XVI, SECTION 9-D.

The committee of the who'e proceeded to the consideration of section 9-D as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

CORPORATE OBLIGATIONS OWNED BY STATE.

1 Section 9-D. An obligation of a corporation held or owned by the state
2 government shall not be exchanged, transferred, remitted, postponed, or dimin-
3 ished by law, or discharged except by payment thereof into the state treasury.

NOTE.

Source: Article III, section 24:

"No obligation or liability of any railroad or other corporation, held or owned by the commonwealth, shall ever be exchanged, transferred, remitted, postponed or in any way diminished by the general assembly nor shall such liability or obligation be released, except by payment thereof into the state treasury."

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

Special Note to the commission by the committee on style.

Recommendation of Change in Substance.

Insert, line 1, before "an," "except as prescribed by law."

Strike out, line 3, "by law."

Your committee believe that the state government should have the right to make regulations under which it could deal with the obligations of a corporation held by it in any manner conducive to the public interest, and that it may be that in order to safeguard the interests of the state government as an owner of corporate securities, the state government should be permitted to exchange, transfer or even to remit, postpone or diminish the obligation.

On the question,

Will the committee adopt the section as reported?

The CHAIRMAN. The suggestion of the committee on style is that an amendment be inserted in line 1 before "An," "Except as prescribed by law," so that it will read, "Except as prescribed by law an obligation of a corporation." This practical thought occurred, under the absolute prohibition, what is the state to do with escheated stock and any property that escheats of any kind, except payment thereof into the state treasury? That means payment thereof in full. I know this; under the so-called escheat act, by which quite large sums of money are turned over to the state, the state has authority to go in the safe deposit boxes that have not been opened for years and take property out of them. It occurred to me that this constitutional provision might prevent the disposal of property, and the whole thing would have to be taken care of by statute under which all the sales could be made. If some member of the commission will move the adoption of this amendment as proposed, it would get the matter before the commission.

Mr. SULZBERGER. Mr. Chairman: I move that the amendment recommended by the committee on style be adopted.

Mr. GORDON. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVI, SECTION 9-E.

The committee of the whole proceeded to the consideration of section 9-E as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

STATUTES OF LIMITATIONS.

1 Section 9-E. No law shall discriminate between corporations and individuals
2 with respect to the time in which suit may be brought against them.

NOTE.

Source: Part of Article III, section 21:

"* * * No act shall prescribe any limitations of time within which suits may be brought against corporations for injuries to persons or property, or for other causes, different from those fixed by general laws regulating actions against natural persons, and such acts now existing are avoided. (Amendments of November 2, 1915.)

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

Mr. GORDON. Mr. Chairman: I would like to make a suggestion. The section reads, "No laws shall discriminate between corporations and individuals with respect to the time in which suit may be brought against them." Should it not be against either? I move that the word "them" in the last line be stricken out and the word "either" be substituted in lieu thereof.

Mr. THORPE. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVI, SECTION 10.

The committee of the whole proceeded to the consideration of section 10 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

REVOCATION AND ALTERATION OF CORPORATE CHARTERS.

1 Section 10. Corporate charters revocable when this constitution becomes
2 effective and charters hereafter granted may be amended or revoked as prescribed
3 by law so as to do no injustice to the members or stockholders.

NOTE.

Source: Article XVI, section 10:

"The general assembly shall have the power to alter, revoke or annul any charter of incorporation now existing and revokable at the adoption of this constitution, or any that may hereafter be created, whenever in their opinion it may be injurious to the citizens of this commonwealth, in such manner, however, that no injustice shall be done to the corporators. No law hereafter enacted shall create, renew or extend the charter of more than one corporation."

Changes in Substance: None.

Clarifying Amendments: The commission have omitted that part of article XVI, section 10, of the present constitution, which provides that: "No law hereafter enacted shall create, renew or extend the charter of more than one corporation," because there is apparently a direct conflict between its provision and article III., section 26-C, clause (m) (Article III, section 7, clause 26, of the present constitution), which provides that no special law

shall be enacted "creating corporations, or amending, renewing or extending their charters." It is evident that a literal enforcement of both of these provisions would prevent the creation of any corporation, or the renewal or the extension of the charter of any existing corporation. By the provisions of article III, a law creating, extending or renewing a corporation cannot be special, that is, apply to only one designated corporation; while under the provisions of article XVI, no general law creating corporations or extending of renewing the charters of existing corporations can be passed.

The conflict between the two articles apparently occurred in the following manner: The convention of 1837 adopted the policy of preventing a law being passed creating more than one corporation, or renewing or extending the charter of more than one corporation. This policy was embodied in the constitution of 1838, article I, section 25, which provides: "No law hereafter enacted shall create, renew or extend the charter of more than one corporation."

The convention of 1873 adopted an entirely different policy, namely, that of preventing any special law being passed relating to corporations. This policy they embodied in article III, section 7, clause 26, of the present constitution, but omitted to strike out the provision of the constitution of 1838.

The conflict is avoided by striking out that part of article XVI, section 10, of the present constitution, which embodies the earlier and now obsolete policy of the constitution of 1838.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

The CHAIRMAN. The chair would like to have the thought of the commission as to whether, in this section as it is recommended, the precise thought is carried forward that is in the old constitution.

Mr. FOX. I was just about to move that we adopt this section as it is contained in the revision of May 20, 1920. It seems to me it follows more closely the language of the constitution of 1874.

The CHAIRMAN. The chair would ask the thought of the members of the commission as to whether there is anything in the note appended to this section. The chair might call the attention of the commission to the fact that prior to the constitution of 1874, the chair's recollection is that all charters were granted by special act of assembly, or at least a very great number of them, and, of course, they are now granted under general law, and whether some of the provisions of the old constitution are not in conflict. It was intended by the section as proposed here to prevent that conflict.

Mr. FOX. Under the suggestion which I have just offered there—

The CHAIRMAN. Will you read it while you have it in hand.

Mr. FOX. The section would read thus:

"The general assembly shall have the power to alter, revoke or annul any charter of incorporation now existing and revokable at the adoption of this constitution, or any that may hereafter be created, whenever in their opinion it may be injurious to the citizens of this commonwealth, in such manner, however, that no injustice shall be done to the corporators." I move that as a substitute.

Mr. CUYLER. Mr. Chairman: I second the motion to substitute.

The substitute was adopted.

ARTICLE XVI, SECTION 10-A.

The committee of the whole proceeded to the consideration of section 10-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

CONDITIONS IMPOSED ON CERTAIN BENEFITS TO CORPORATIONS.

1 Section 10-A. No law shall remit the forfeiture of the charter of a corpora-
2 tion now existing, or amend the same, or otherwise benefit such corporation,
3 except upon condition that it shall thereafter hold its charter subject to the
4 provisions of this constitution.

NOTE.

Source: Article XVI, section 2:

"The general assembly shall not remit the forfeiture of the charter of any corporation now existing, or alter or amend the same, or pass any other general or special law for the benefit of such corporation, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this constitution."

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE XVI, SECTION 10-B.

The committee of the whole proceeded to the consideration of section 10-B as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

CERTAIN UNUSED CHARTERS VOID.

1 Section 10-B. A charter under which there has been no bona fide organization
2 and commencement of business when this constitution becomes effective shall
3 be void.

NOTE.

Source: Article XVI, section 1:

"All existing charters, or grants of special or exclusive privileges, under which a bona fide organization shall not have taken place and business been commenced in good faith, at the time of the adoption of this constitution, shall thereafter have no validity."

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

Special Note to the commission by the committee on style.

Recommendation of Change in Substance.

Omit.

In 1874 when this section came in force, there were a number of charters of incorporation granted under special laws which it was important to cancel. To re-adopt the section in a new constitution would be to cancel all charters taken out under the existing general incorporation act, if the incorporators had not done business. The requirement that persons who secure a charter must, in a reasonable time, perfect their organization and begin business is amply taken care of by the act of June 13, 1883, section 5, P. L. 123. For act applying only to banks, see act of April 23, 1909, P. L. 143.

On the question,

Will the committee adopt the report of the committee on style to omit this section?

It was adopted.

ARTICLE XVI, SECTION 11.

The committee of the whole proceeded to the consideration of section 11 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

BANK CHARTERS.

1 Section 11. Provision may be made by law for the incorporation and regula-
2 tion of banks and incorporated trust companies.

NOTE.

Source: Article XVI, section 11:

"No corporate body to possess banking and discounting privileges shall be created or organized in pursuance to any law without three months, previous public notice, at the place of the intended location, of the intention to apply for such privileges, in such manner as shall be prescribed by law, nor shall a charter for such privilege be granted for a longer period than twenty years."

Changes in Substance: The section as proposed is practically a new section, the requirements of the section as it appears in the present constitution having been omitted because your Commission believe they are more properly the subject of statutory than constitutional regulation.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

Mr. FISHER. This section 11 as embodied in the draft does not seem to follow the wording of the amendment which was adopted at the recent election. My recollection is that the commission instructed us to follow the wording of that amendment. I move that we adopt an amendment in the language of the amendment as voted on at the recent election.

Mr. CUYLER. Mr. Chairman: I second that motion.

The motion was agreed to.

ARTICLE XVI, SECTION 13.

The committee of the whole proceeded to the consideration of section 13 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

JOINT STOCK COMPANIES OR ASSOCIATIONS TREATED AS CORPORATIONS.

1 Section 13. The term "corporation" as used in this constitution includes
2 joint stock companies or associations having any of the powers or privileges of
3 corporations not possessed by individuals or partnerships.

NOTE.

Source: Article XVI, section 13:

"The term 'corporations,' as used in this article, shall be construed to include all joint stock companies or associations having any of the powers or privileges of corporations not possessed by individuals or partnerships."

Changes in Substance: None.

Clarifying Amendments: As, throughout the draft of the constitution herein suggested, the term "corporation" is never used except as defined in this section, the limitation of the definition found in the present constitution to the use of the term "in this article" is omitted.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the commission adopt the section as reported?

It was adopted.

ARTICLE XVII, SECTION A-1.

The committee of the whole proceeded to the consideration of section A-1 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

REGULATION OF PUBLIC UTILITIES.

1 **Section A-1.** Public service and the business of corporations engaged therein
2 may be regulated by law or by an agency created by law.

NOTE.

Source: This is entirely new matter. Although it is a statement of a principle universally recognized by the courts, the Commission believe that its fundamental character and importance warrant its embodiment in the constitution.

Special Note to the commission by the committee on style.

Recommendation of Change in Substance.

Strike out, line 1, "corporations," and insert, "those."

It is not only the business of corporations engaged in public service but the business of all those engaged in such service which is subject to regulation by law or by an agency created by law.

On the question,

Will the committee adopt the section as reported?

Mr. FISHER. Mr. Chairman: I move that the recommendation of the committee on style to strike out in line 1 "corporations" and insert "those" be adopted.

Mr. GORDON. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVII, SECTION 1.

The committee of the whole proceeded to the consideration of section 1 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

RAILROADS AND CANALS TO BE PUBLIC HIGHWAYS AND COMMON CARRIERS.—CONNECTION WITH OTHER LINES.

1 Section 1. Railroads and canals shall be public highways and railroad and
2 canal corporations shall be common carriers. Such corporations may construct
3 and operate railroads and canals between any points within the state and may
4 cross and connect with other railroads and canals within the state and at the
5 state line. They shall receive, at connecting points, and shall transport
6 each other's passengers and freight without delay or discrimination. Railroad
7 corporations shall receive at connecting points and transport each other's cars
8 and canal corporations shall likewise receive and transport each other's vessels.
9 A corporation organized for the purpose shall have the right to construct lines
10 of telegraph and telephone within the state. The owners or operators of tele-
11 graph or telephone lines may connect them with the telegraph and telephone
12 lines of others.
13 The rights and obligations set forth in this section shall be exercised only as
14 prescribed by law or by an agency created by law.

NOTE.

Source: (1) Article XVII, Section 1:

"All railroads and canals shall be public highways, and all railroad and canal companies shall be common carriers. Any association or corporation organized for the purpose shall have the right to construct and operate a railroad between any points within this state, and to connect at the state line with railroads of other states. Every railroad company shall have the right with its road to intersect, connect with or cross any other railroad; and shall receive and transport each the other's passengers, tonnage and cars loaded or empty, without delay or discrimination."

(2) Part of article XVI, section 12:

"Any association or corporation organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph within this state, and to connect the same with other lines, and the general assembly shall, by general law of uniform operation, provide reasonable regulations to give full effect to this section. * * *"

Changes in Substance: (1) The statement of the right to construct and operate a railroad is confined to corporations organized for the purpose. In the present constitution the right is conferred, also, on "association * * * organized for the purpose." The section herein proposed omits any reference to associations because it is not practical to carry on the business of constructing and maintaining a railroad by a private agency other than a corporation.

(2) The right to construct and operate a canal is expressly given to canal corporations.

(3) As herein suggested, the section sets forth the right of a canal corporation to connect its facilities with and construct its facilities across the facilities of other canals and railroad corporations, and the right of a railroad corporation to connect its facilities with and construct its facilities across the facilities of other railroads and canals. Under the present constitution, this right of connection and crossing is confined to railroad corporations, and the right of railroad corporations to connect their facilities with or construct their facilities across the facilities of canal corporations is not mentioned.

(4) The section herein suggested sets forth the obligations of a railroad corporation to receive and transport the passengers and freight delivered at connecting points by other railroad and canal corporations, and a similar obligation on the part of canal corporations. Under the present constitution, the statement of obligation is confined to railroad corporations, no reference being made to any obligation on railroad corporations to receive and transport passengers and freight delivered by canal corporations, or of a reciprocal obligation on the part of canal corporations.

(5) The section herein suggested sets forth the obligation of a railroad corporation to receive and transport the cars of another railroad corporation when delivered at connecting points, and also the obligation of a canal corporation to receive and transport the vessels of other canal corporations when delivered at connecting points. The wording of the corresponding section in the present constitution confines the statement of the obligation to the obligation of railroad corporations to receive and transport each other's cars.

(6) Article XVI, section 12, of the present constitution gives to individuals, associations and corporations the right to construct and maintain telegraph lines. The section proposed confines this constitutional right to corporations organized for the purpose and confers on telephone corporations a similar right in respect to telephone lines.

Changes in Style: The commission's rules of style have been followed.

Special Note to the commission by the committee on style.

In re-arranging the provisions of this section, your committee have placed under this section all provisions conferring rights on the owners of railroads, telegraphs and telephones in respect to the building and operation of their facilities, and the mutual rights in respect to connection and crossing of facilities, and carrying and transmission of each other's freight cars and messages. The section proposed covers all of section 1 as adopted by the Commission except the provision regarding the construction of railroads and canals according to fixed standards, which has been transferred to sections 1-A. It also includes all the provisions of section 2-A as adopted by the commission.

Recommendation for Change In Substance.

Insert, on line 12, after the word "others," "They shall receive at connecting points and shall transport each other's messages."

The adoption of this amendment is urged by your Committee for two reasons: (1) It makes the right to connect the facilities of two telegraph or two telephone companies, or of a telegraph and a telephone company effective, and (2) It makes the provisions in regard to the mutual rights of such companies in respect to each other's messages, similar to those conferred on railroad and canal companies in respect to each other's freight cars and vessels.

On the question,

Will the committee adopt the section as reported?

Mr. GORDON. Did not the old constitution require the transportation of cars of each other at connecting points? I think it did.

The CHAIRMAN. "They shall receive at connecting points and shall transport each other's passengers and freight without delay or discrimination." This is extending the same principles, Judge Gordon, to telegraph messages and telephone messages.

Mr. FISHER. Mr. Chairman: I move the adoption of the recommendation of the committee to insert in line 12 after the "others," "They shall receive at connecting points and shall transport each other's messages."

Mr. PINCHOT. Mr. Chairman: I second the amendment.

On the question,

Will the committee agree to the amendment?

Mr. FISHER. The purpose of the amendment is to extend practically the same provision as that which applies to railroads to the receipt and dispatch of messages.

The CHAIRMAN. On telephone and telegraph lines.

On the question recurring,

Will the committee agree to the amendment?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVII, SECTION 1-A.

The committee of the whole proceeded to the consideration of section 1-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

CONSTRUCTION OF RAILROADS AND CANALS TO CONFORM TO FIXED STANDARDS.

1 Section 1-A. Provision shall be made by law for the construction of railroads
2 and canals in accordance with standards prescribed by law or by an agency
3 created by law.

NOTE.

Source: This is entirely new matter. It is inserted to make effective the rights set forth in section 1 of this article. The mutual right of transportation for cars and vessels is not practicable unless railroad and canal facilities are constructed according to standards which, as far as practicable, should be uniform throughout the state. These standards should be prescribed by law or by an agency like the public service commission.

Special Note to the commission by the committee on style.

The section here suggested embodies your committee's understanding of the last part of article XVI, section 1, as adopted by the commission, which reads:

"* * *and to that end shall, except when specially permitted by competent state authority authorized thereto by general laws, build and construct railroads and canals in conformity with fixed standards."

We believe the draftsman of this section intended to require (1) that fixed standards should be established by law or by an agency created by law, and (2) that these fixed standards could be modified in special cases under the provisions of law or the rules of an agency created by law. As it is not possible to state any rule to determine the special cases, the only practical way to express the general intent of the draftsman is to place on the law-making authorities the duty of fixing standards of construction in a law or of conferring on an agency, such as the Public Service Commission, that power.

On the question,

Will the committee adopt the section as reported?

Mr. REED. What is the purpose of that? Railroads are regulated to death now. They have standards set up by the interstate commerce commission under which they have to conform as to everything except track, probably they will have that before long. It seems to be satisfactory.

Mr. CUYLER. It seems to me, Mr. Chairman, that is a very unwise provision. It seems to me that would hamper the railroads. They have all kinds of standards, standards for narrow-guage roads, and standards for broad-guage roads. It seems to be a meaningless provision.

The CHAIRMAN. The real purpose is, as the chair recollects it, the standardizing of canals. I can not see where the railroad situation under the present modern situation could be disturbed.

Mr. PINCHOT. Would you apply it only to canals? It is a matter of real importance in connection with canals. There are numerous cases where canals have been constructed which would not admit of transporting boats of other canal companies. I believe it should be both railroads and canals, but I am especially strong on the matter of canals.

Mr. FISHER. There does not appear to be any necessity for an expression in the constitution on this subject. If we make no expression whatever, the legislature will then exercise full control over the subject. They can establish such standards as they think wise. Perhaps in view of the suggestion made by Judge Reed and Mr. Cuyler, it might be well enough just to remain silent on the question of standardizing these transportation systems. With that view I move, to test the opinion of the commission, that we strike out this provision.

The CHAIRMAN. My thought is that the standardizing of canals should go in.

Mr. CUYLER. What do you mean by standardizing of canals? Do you mean width and depth?

The CHAIRMAN. Canals are to be constructed, and there are some canals now proposed to be constructed that should be constructed to a standard so that there could be interchange of canal traffic, like the boats in Europe.

Mr. CUYLER. New York has just spent hundreds of millions of dollars on the Erie canal and apparently without extending or affecting the increased use of that canal. It was constructed twenty-five or thirty feet deep. I conceive this matter to be entirely a matter of legislation. It is not a constitutional matter at all.

Mr. CHAIRMAN. I move to amend by striking out the word "railroads" so as to apply to canals.

Mr. PINCHOT. I second the amendment.

The amendment was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVII, SECTION 2-B.

The committee of the whole proceeded to the consideration of section 2-B as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

NO DISCRIMINATION IN SERVICES OR CHARGES.

1 Section 2-B. All individuals, associations and corporations shall have equal
2 right to have persons and property transported over railroads and canals and
3 to have messages transmitted over telegraph and telephone lines. There shall be

4 no undue or unreasonable discrimination, in facilities or charges, for such trans-
5 portation or transmission within the state or coming from or going to any other
6 state. A charge for such transportation or transmission shall not exceed the
7 charge for a similar service in the same direction to a more distant point but
8 excursion or commutation tickets may be issued at special rates.

NOTE.

Source: Article XVII, section 3:

"All individuals, associations and corporations shall have equal right to have persons and property transported over railroads and canals, and no undue or unreasonable discrimination shall be made in charges for or in facilities for, transportation of freight or passengers within the state or coming from or going to any other state. Persons and property transported over any railroad shall be delivered at any station at charges not exceeding the charges for transportation of persons and property of the same class in the same direction to any more distant station; but excursion and commutation tickets may be issued at special rates."

Changes in Substance: The extension to the services and charges of telegraph and telephone lines, of the principle embodied in the corresponding sections of the present constitution preventing discrimination in the service and charges by railroad and canal corporations, and a less charge by such corporations for transportation to a more distant than a nearer point in the same direction.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

Mr. REED. There is no objection, there can be no objection to the general declaration or the general proposition that everybody shall have equal rights and that there shall be no undue or excessive or unreasonable discrimination; but the last sentence "A charge for such transportation or transmission shall not exceed the charge for a similar service in the same direction to a more distant point but excursion or commutation tickets may be issued at special rates." As it is worded it conflicts with the interstate commerce law and the jurisdiction of the interstate commerce commission, which possibly has the power to order lower rates per mile for a long distance than it has for a short distance.

The CHAIRMAN. That is the provision of the present constitution.

Mr. REED. Mr. Chairman: I know it is, sir; that is, since the interstate commerce commission and the interstate commerce laws have come into effect, I would suggest, if you think it is important, that there be added to that last sentence or inserted the words "within the state." "A charge for such transportation or transmission shall not exceed the charge for a similar service in the same direction to a more distinct point within the state." I offer that as an amendment.

Mr. GORDON. I second the amendment.

On the question,

Will the committee agree to the amendment?

Mr. SULZBERGER. What section are you reading from?

Mr. REED. Section 2-B. I was just thinking whether it is to go there or should be inserted after the word "transmission." "A charge for such transportation or transmission within the state shall not exceed the charge for a similar service in the same direction to a more distant point."

The CHAIRMAN. The interstate commerce commission has no jurisdiction over telegraphs.

Mr. CUYLER. Oh, yes, they have.

Mr. REED. I think they have now.

Mr. SULZBERGER. What is the use or value of it?

Mr. REED. My amendment?

Mr. SULZBERGER. Yes, sir.

Mr. REED. It is to restrict this to intrastate business, business within the state.

Mr. SULZBERGER. Don't you think it is restricted anyhow without your saying anything?

Mr. REED. No, I do not think so.

Mr. SULZBERGER. Doth the constitution of the United States prohibit it?

Mr. REED. Your state and your interstate rate may cross each other and interfere. You have two jurisdictions.

Mr. SULZBERGER. You would have to have.

Mr. REED. You have a rate which is between points in the state of Pennsylvania, and you have a rate between points in the state of Pennsylvania and a point outside of the state of Pennsylvania, say, in the state of Kansas.

Mr. SULZBERGER. You have federal legislation. Don't this limit the whole object of this article to conditions within the state?

Mr. REED. I want to make it clear that it does.

Mr. SULZBERGER. I think it is pretty clear without being made so.

Mr. REED. Well, I insist on my amendment.

On the question recurring,

Will the committee agree to the amendment?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVII, SECTION 2-B¼.

The committee of the whole proceeded to the consideration of section 2-B¼ as reported by the committee on style.

The secretary read the section, notes and recommendations of the commission on style as follows:

PREFERENCES AND REBATES PROHIBITED.

1 Section 2-B¼. No discrimination in charges or facilities for transportation
2 shall be made between transportation corporations and individuals, or in favor of
3 either, by abatement, drawback or otherwise, and no railroad or canal corpora-
4 tion, or any lessee, manager or employee thereof, shall make any preferences in
5 furnishing cars or motive power.

NOTE.

Source: Article XVII, section 7:

"No discrimination in charges or facilities for transportation shall be made between transportation companies and individuals, or in favor of either by abatement, drawback or otherwise, and no railroad or canal company, or any lessee, manager or employe thereof, shall make any preferences in furnishing cars or motive power."

Changes in Substance: None.

Changes in Style: The exact language of the corresponding section in the present constitution is used except that, in accordance with the uniform recommendation of the Committee, the word "corporation' 'is used instead of "company."

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE XVII, SECTION 2-C.

The committee of the whole proceeded to the consideration of section 2-C as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

CONSOLIDATION PERMITTED.

1 Section 2-C. A public service corporation, when authorized by law or by an
2 agency created by law, may consolidate with another or may acquire its stock,
3 property or franchises.

NOTE.

Source: Article XVII, section 4:

"No railroad, canal or other corporation, or the lessees, purchasers or managers of any railroad or canal corporation, shall consolidate the stock, property or franchises of such corporation with, or lease, or purchase the works or franchises of, or in any way control any other railroad or canal corporation owning or having under its control a parallel or competing line; nor shall any officer or such railroad or canal corporation act as an officer of any other railroad or canal corporation owning or having the control of a parallel or competing line; and the question whether railroads or canals are parallel or competing lines shall, when demanded by the party complainant, be decided by a jury as in other civil issues."

Change in Substance: The provisions of the present constitution (article XVII, section 4) are confined to railroads and canal corporations, owning or operating competing lines. When the present constitution was adopted, the importance of railroads and canals overshadowed the comparatively few corporations carrying on other kinds of public service. There was, therefore, at that time, not the necessity which exists today of expressing in the constitution the policy of the commonwealth towards the whole subject of the consolidation of public service corporations irrespective of the nature of the public service performed.

In the proposed section, it is expressly stated that any two or more public service corporations may consolidate when permitted to do so by law or by an agency created by law, such as the public service commission.

When the present constitution was adopted, the only known way to prevent the evils of the monopolistic control of public utilities by private corporations was to prevent the consolidation of any two public service corporations which operated public facilities. In the last fifty years an entirely new system of meeting the problems presented by the private ownership and operation of public utilities has become firmly established in federal and state practice. The state government, through its public service commission is exercising the power of the commonwealth to regulate the rates of charges made and the service given by all public service corporations. Under the present system of complete public regulation as to rates and service, there are many cases in which the consolidation of two public service corporations and the operation of their facilities as one system, as, for instance, all the passenger railway lines in a city, may be of distinct advantage to the public. Two telephone lines serving the same district, though in some cases, of temporary advantage to the public, in others represent an unnecessary and therefore uneconomical and harmful waste of capital and energy.

We believe, therefore, that the policy expressed in article XVII, section 4, of the present constitution, which seeks to absolutely prevent, under all circumstances, the consolidation of canal or railroad corporations owning parallel or competing lines, is unwise. This does not mean, however, that we believe two such corporations should be allowed to consolidate at any time. On the contrary, we believe that the whole question of their consolidation should be regulated by law or by an agency created by law, such as the public service commission. The section as proposed herein embodies this policy.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

Mr. FOX. I would like to ask whether the committee on style intended that that should be as general as it is, or whether it is to be confined to corporations of the same class.

The CHAIRMAN. Might I say, speaking for myself, that it should be confined to corporations of the same class?

Mr. FOX. It does not say so.

Mr. SULZBERGER. Why not say so?

The CHAIRMAN. The committee on style was guided by the fact that at the May meeting the words "formed for the same or a kindred purpose," were stricken out, and the reason for the striking out was in order that electric lights companies and street railway companies or different electrical companies might merge with power companies, so that they could carry on a general electrical supply business.

Mr. SULZBERGER. And now a canal company can buy an electric light company, can it, under this new language?

The CHAIRMAN. Subject to the ruling of the public service commission, yes, sir; and they pretty nearly have done that. In fact, in some sections of the state, they have done it through holding companies. The canal companies control the water power and have turned their water power to generating electricity and need the electric light companies to dispose of power. Of course, this makes a departure, as the chair understands it, in the public policy of the state, but the question is whether that is in line with modern thought.

Mr. REED. Mr. Chairman: I would like to ask as a matter of instruction: "A public service corporation, when authorized by law or by an agency created by law, may consolidate another," does that mean that any public service corporation or any other corporation—

The CHAIRMAN. To make that clear, if you will suggest the words—

Mr. REED. That will possibly answer Judge Sulzberger's objection. "A public service corporation, when authorized by law or by an agency created by law, may consolidate with another public service corporation or may acquire its stock, property or franchise." That would prevent street railway companies from owning a bank, because they do not have the money. I move that as an amendment.

Mr. FISHER. Mr. Chairman: I second the amendment.

On the question,

Will the committee agree to the amendment?

Mr. McCORMICK. May I ask for information before we vote? Would this permit the consolidation of electric light companies in cities without the consent of the city authorities being obtained.

The CHAIRMAN. Yes, sir.

Mr. McCORMICK. Join together franchises without the consent of the public service commission?

The CHAIRMAN. It would require the consent of the public service commission.

Mr. REED. I think that is so now.

Mr. SULZBERGER. It ought to be so.

The CHAIRMAN. They can merge under the act of 1876 with canals. It would require the consent of the public service commission.

Mr. McCORMICK. Under the same power it would permit parallel railroads to combine?

The CHAIRMAN. Yes, sir.

On the question recurring,

Will the committee agree to the amendment?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVII, SECTION 2-D.

The committee of the whole proceeded to the consideration of section 2-D as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

LIMITATION OF POWERS OF COMMON CARRIERS.

1 Section 2-D. A corporation being a common carrier shall not transport over
2 facilities which it owns or operates articles which it has directly or indirectly
3 mined or manufactured for sale.
4 Such corporation shall not directly or indirectly acquire an interest in land
5 not necessary for carrying on its business. It shall engage only in the business
6 of a common carrier, except that if it uses electricity as a motive power, it may,
7 when authorized by law, or by an agency created by law, furnish electricity to
8 others for light, heat or power.
9 A mining or manufacturing corporation shall not be deemed a common carrier
10 for the purposes of this section by reason of carrying its products on its rail-
11 road or canal not exceeding fifty miles in length.

NOTE.

Source: Article XVII, section 5:

"No incorporated company doing the business of a common carrier shall, directly or indirectly, prosecute or engage in mining or manufacturing articles for transportation over its works; nor shall such company directly or indirectly engage in any other business than that of common carriers, or hold or acquire lands, freehold or leasehold, directly or indirectly, except such as shall be necessary for carrying on its business; but any mining or manufacturing company may carry the products of its mines and manufactories on its railroad or canal not exceeding fifty miles in length."

Changes in Substance: Article XVII, section 5, prevents a corporation being a common carrier engaging in any other business. The section herein proposed makes one exception by giving to a common carrier using electricity as a motive power the right "when authorized by law" to "furnish electricity to others for light, heat or power." We believe, as thus guarded, this exception is in the public interest. A trolley corporation may use electricity generated by waterpower to run its cars. There does not appear to be any good reason why, in such a case, the owners should not have the right to dispose of the surplus electrical power generated.

Clarifying Amendments: (1) The provision in the corresponding section of the present constitution that a common carrier shall not "directly or indirectly prosecute or engage in mining or manufacturing articles for transportation over its works" is ambiguous. No common carrier engages in manufacturing articles for the purpose of transporting them. The purpose of the manufacture is sale. The transportation may or may not be a necessary incident of the sale. In view of the well-known evils resulting from a common carrier engaging in mining or manufacturing in competition with other mining or manufacturing corporations situated along its lines, it is reasonably certain that the intent of those who drafted this section in the present constitution was, as expressed in the section herein suggested, to prevent a corporation being a common carrier transporting over its lines property mined or manufactured by it for the purpose of sale.

(2) Under the wording of the present constitution, it is uncertain whether it is constitutional for a corporation, being a common carrier, to transport over its facilities an article such as coal mined by it for the purpose of its own consumption. In the draft herein suggested, if a common carrier may mine coal for its own use, it may convey it.

(3) The section herein suggested is so worded as to remove any possibility of a contention that a mining or manufacturing corporation becomes a common carrier for the purposes of the section by reason alone of its carrying its products on its railroad or canal less than fifty miles in length. This was probably the intent of the drafters of the corresponding section in the present constitution. The provision that "any mining or manufacturing corporation may carry the products of its mines and manufactures on its railroad or canal not exceeding fifty miles in length" was evidently inserted in the constitution as a matter of extra precaution. The rest of the section does not prevent such mining or manufacturing corporation carrying its own products on its own railroad or canal unless the mining and manufacturing corporation, by operating a railroad or canal less than fifty miles in length for the purpose of carrying its own products, becomes thereby a common carrier. If it does become a common carrier, then the carrying of its own products and the engaging in mining is directly contrary to all the prohibitions of the section. There is, however, nothing in the present constitution which makes

a manufacturing company constructing its own railroad or canal to carry its own products a common carrier. Section 1 of article XVII of the present constitution declares "All railroads and canals shall be public highways," but it does not say that all corporations owning a track and running cars over the track shall be common carriers: it provides merely that "all railroad and canal companies shall be common carriers."

Changes in Style: The commission's rules of style have been followed.

Special Note to the commission by the committee on style.

Recommendation for Change In Substance.

Strike out, line 7, "by law or."

Your committee believe that the authorization should be given only by a responsible agency created by law to regulate public utilities.

On the question,

Will the committee adopt the section as reported?

The CHAIRMAN. The recommendation of the committee on style is to strike out in line 7 "by law or," so that it will read "an agency created by law."

Mr. FISHER. Mr. Chairman: I move the adoption of the amendment.

Mr. REED. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the committee agree to the section as amended?

Mr. REED. Mr. Chairman: I think, bearing out Mr. Cuyler's criticisms of last night on the right of corporations to hold real estate, that the words "not necessary" in the fifth line should be modified in some way. What have you to suggest, Mr. Cuyler?

Mr. CUYLER. A railroad company may buy land which is not necessary to it today but is useful and expected to be necessary in the future. It seems to me it is unduly restrictive.

The CHAIRMAN. Is the amendment seconded?

Mr. REED. I do not know what amendment I made.

The CHAIRMAN. To strike out the words "not necessary."

Mr. REED. The whole sentence ought to be stricken out.

Mr. GORDON. Why not insert after the word "an," the words "interest in land except for the purpose of carrying on its business?" I move that amendment.

Mr. CUYLER. That will cover it, and I will second the amendment.

The CHAIRMAN. Then the amendment to strike out the words "not necessary" so as to read "not necessary for the purpose of carrying on its business?"

Mr. SULZBERGER. No, no, "except for the purpose of carrying on its business."

Mr. REED. "Except for the purpose of carrying on its business."

On the question,

Will the committee agree to the amendment?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVII, SECTION 8.

The committee of the whole proceeded to the consideration of section 8 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

PASSES PROHIBITED.

1 Section 8. A corporation being a common carrier shall not grant free passes
2 or reduced rates to any person except to its own officers or employes.

NOTE.

Source: Article XVII, section 8:

"No railroad, railway or other transportation company shall grant free passes, or passes at a discount, to any person except officers or employes of the company."

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

Special Note to the commission by the committee on style.

The commission referred to the committee the question whether a clause should not be inserted in this section providing for passes to the clergy. Your committee are of the opinion that such a clause would be unwise. It is class legislation. Furthermore, the work of a clergyman or priest is not dignified by a law which treats him as an object of public charity.

On the question,

Will the committee adopt the section as reported?

Mr. FISHER. I think it is only fair to the commission to call their attention to the proposed allowance of special rates to ministers and priests. The committee refused to allow any such special rates. We thought it did not dignify the ministry and was a species of special legislation. However, I have been approached by some of the gentlemen of the cloth who think that it would not inflict any indignity if they were permitted to have these special rates that were formerly in effect. I believe the railroads have no particular objection to allowing clerical rates if they be made legal.

Mr. CUYLER. Oh, yes, I think the railroads have very serious objection. The matter has been fought out for years and years. I do not think any state does that now. As a matter of fact, clergymen are granted reduced rates within the state, and as a rule they have been entirely satisfied with them. It seems to me a very unfortunate provision to put in the constitution, and it is in violation of the United States transportation act.

On the question recurring,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE XVII, SECTION 9-A.

The committee of the whole proceeded to the consideration of section 9-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

GRANT OF WATER RIGHTS.

1 Section 9-A. A right in waters shall not be granted by the state government
2 or by a municipality for more than fifty years or without reasonable compensa-
3 tion.

NOTE.

Source: This is entirely new matter. It recognizes the principle that the people of the commonwealth should not part permanently with any right they now have in the waters of the state, and where such right is temporarily vested in individuals, associations or corporations, reasonable compensation shall be made.

Special Note to the commission by the committee on style.

As adopted by the commission this section read:

"No right, interest or privilege in any waters or the use thereof, for water power purposes, shall be granted by the commonwealth of Pennsylvania except under general laws for a period not exceeding fifty years and on condition of reasonable compensation."

As thus worded, the section deals with three subjects: (1) prohibition of special legislation granting rights in water-ways or their use for water power purposes; (2) prohibiting such grants except by law (3) limiting the period of such grants to fifty years. Following the plan herein suggested, of gathering under article III, section 26-C, all provisions in respect to special and local legislation, we have suggested in article III, section 26-C, a wording for clause (m) which is sufficiently comprehensive to prevent the granting of any right in any waters, or the use thereof for water power purposes by special or local law.

It will be noted that, as adopted by the commission, the expression "shall be granted by the commonwealth of Pennsylvania" is used. In the suggested rewording we have assumed that the Commission meant to make the prohibition applicable not only to any grant by the state government, but also by any municipality. If this was the intention, it is accurately expressed in the suggested re-wording.

We have omitted the words "interest or privilege" as they add nothing to "right." We have also omitted the words "or the use thereof for water power purposes," because the right to the use of a waterway for water power purposes is unquestionably a "right in the water."

Recommendation for Change In Substance.

Omit.

The committee believe that this section was adopted by the commission in order to harmonize the public policy of the commonwealth with that of the government of the United States. Upon reference, however, to the recent water power legislation of congress it appears that the fifty-year limitation upon the duration of a water power license is coupled with a provision that the license shall be renewed for a second fifty-year period unless, at the expiration of the first, the government takes over the plant on payment of the net investment to the license. The committee suggest that such a reasonable legislative protection of the interest of the investor would, if enacted in Pennsylvania, be rendered unconstitutional by the section in its present form. Consideration by the committee of possible ways of expanding the section so as to authorize reasonable legislation has led to the conclusion that if a constitutional declaration on the subject is omitted altogether the commonwealth will be in the best possible position to regulate the development of water powers through the public service commission or such other administrative agency as may exist for the purpose of such regulation. If there were doubt about the regulatory power of the commonwealth a constitutional declaration would be desirable. As there is no doubt, the declaration is not needed as a measure of safety and an unwise declaration might well operate to stifle necessary development.

On the question,

Will the committee adopt the section as reported?

The CHAIRMAN. The recommendation of the committee on style is that this section be omitted.

Mr. PINCHOT. Mr. Chairman: There is obviously a misapprehension on the part of the committee on style as to the provisions of the national water power law. In order to invite discussion on this matter I move that the section be referred back to the committee on style for further discussion.

Mr. REED. No, they are through.

Mr. GORDON. I think the committee on style has exhausted itself, and that the commission ought to take charge of the constitution now and to make such changes as may be necessary. Mr. Pinchot can offer whatever he chooses, and the commission will pass upon it, but do not let this thing go back to its former custodian.

Mr. PINCHOT. I am perfectly satisfied, and am entirely willing to take up the matter if the commission desires.

Mr. FISHER. Mr. Chairman: To bring this subject regularly before the commission, I move the adoption of the recommendation of the committee on style.

Mr. REED. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the recommendation of the committee on style to omit this section?

Mr. GORDON. May I ask, Mr. Fisher, what is the reason for that recommendation?

Mr. PINCHOT. Mr. Chairman: If discussion is in order, I would like to say the committee on style has either acted upon a bill which is not actually the bill that was passed, or for some other reason has misapprehended the effect of the national water power law. The bill which was passed by the last session of congress does these three things. It provides, first, for fifty-year limitations; second, it provides that if at the end of the time, at the end of the fifty-year limitation, two things may happen, three things may happen. First, the license may be renewed to the same holder as before; second, it may pass to another holder, in which case compensation is made to the original holder in accordance with the terms fixed in the law; and, third, the United States itself may take over the right, and in that case also compensation is made to the original holder under the terms fixed in law. The committee on style believes that the provision if it was not renewed to the original holder should be given for a second fifty years, but if the licenses were not taken over by the United States or given to a second holder would be renewed automatically for another fifty-year period to the original holder. What happens in that case is that the license is renewed year after year until a further disposition is made of it. Moreover, the committee believes that under this provision the clause would be rendered unconstitutional. The fact of the matter is, as I see it, that the language of the proposed section in no way prevents the granting of a second license to the same holder. It says the right "shall not be granted by the state government or by a municipality for more than fifty years or without reasonable compensation." It seems to me there is no more prevention in that for the granting of a second license to the same holder, if they charge some compensation at the time, than there would be in a provision that the term of the governor should be four years, limiting the re-election of the same man unless there was a further provision therefor. It seems to me that the clause as it reads is constitutional and not subject to the objection based upon the reading of the present law. Now, as to the merits of the question. This matter has been thoroughly discussed for a great many years in Washington. In the last fifteen years the whole thing has been gone over time and again with the power companies, with their engineers, with their bankers and others, and it finally came to be joint consensus of opinion that a limitation of fifty years is wise and that has been adopted by the congress of the United States. As a matter of fact, the result of such a limitation of fifty-years, instead of limiting the development of water power, has had the directly opposite effect, if it has had any effect. The fact is that water power development in those parts of the United States where that limitation is applied, namely, in the national forests, has been more rapid and much more

intensive than in any other part of the union. It is, of course, wholly impossible for us to forsee what the conditions will be in the development of water power. Our water power will probably be our only source of energy and ought to be held for private development fifty years from now. Therefore, it is wise, as I see it, that the right should terminate at the end of a specified period so as to permit of readjustment of the terms under which that right is granted for public use by private corporations. Moreover, the term fifty years is long enough for the reason that the great majority of water power bonds run only for forty years. Furthrmore, amortization of the capital stock is not necessary at the end of fifty years, and would not be necessary under this because the law could provide, as the national law does, for recompence to the company, for the re-payment to the company of the value of its plant on the basis of what is put into it at the end of that time. There can be, therefore, it seems to me, no reason whatever why this most important source of power, or substitute for coal, and the only inexhaustible source of power, should not have fixed upon it a limitation which is clearly for the public interest, and which has proved in operation to work for the public interest, and against which, so far as I can see, no objection can be urged. The argument that development would be prevented by such a limitation as this is, of course, the usual argument. For a number of years I was in constant consultation with bankers, water power men, officers of great public service corporations, in threshing out the plan which finally was adopted, and I heard repeated over and over again in different forms the argument that not to give a perpetual franchise would be to limit development. It was their constant plea that development was the only thing that should be considered, and that any limitation upon their right to take forever and for nothing, which was the original plan, this principle of government would limit development. The fact is, and I want to emphasize that very strongly, the fact is that no such an effect has been produced. The fact is that where there was a limitation of fifty years, and where there was a reasonable compensation, and where the other provision now embodied in the national law for the protection of the public were in force, there the most rapid development took place. Now, to argue that such a position will limit development in Pennsylvania because our water powers are less, have less fall than elsewhere, is, I think, wholly to misapprehend the situation. We shall always meet the argument of the big corporations that want all they can get, we can always meet it until we put the actual provision into operation, the argument that to do so will limit development and injure the interests of the state. Of course, we have got to expect that because it is absolutely a natural and inevitable thing, but the rock-bottom of it is that having met those arguments over and over again in national matters, both with reference to navigable streams and with streams with higher fall in mountains, the proof of the pudding remains that the development has been more rapid where this clause has been in force. It seems to me that to adopt this provision would be to fully protect the legitimate interests of the people of the state of Pennsylvania, and for that reason I hope very much that Senator Fisher's amendment will not pass.

Mr. REED. Mr. Pinchot, how far does the federal law apply to the state of Pennsylvania?

Mr. PINCHOT. To the navigable streams.

Mr. REED. We have some information from some lawyer in the state of Pennsylvania that there are not waters in the state of Pennsylvania under the jurisdiction of the United States. Does not your water bill cover that?

Mr. PINCHOT. I am not aware that all the waters of the state are under the jurisdiction of the United States and that they are protected. That is contradicted by the fact that the water supply commission is constantly issuing rights to develop water power without reference to the United States.

Mr. REED. I do not know, could congress regulate it?

Mr. PINCHOT. Navigable streams are controlled by congress.

Mr. FISHER. I regret that Mr. Pepper is not here to answer for the action of the committee. He was particularly interested in this provision. The influences that moved the committee to its recommendation were, first, that the general government had authority over navigable streams and it would be useless for the state to make a constitutional enactment on the subject. In the scond place, their thought was that the limitation of fifty years placed upon grants of water power would practically result in the non-use of the water for power purposes. Now, Mr. Pinchot disagrees with that, but there came to the committee expressions of opinion to that effect. It seems that there are people interested in the development of the waters of commonwealth, and there is a question as to the utility of the waters and whether they can be applied to the public service. That subject is being investigated by engineers and by those who have the public weal at heart. Some expressions came to us that if a fifty-year limitation were to be put in the constitution it would mean the abandonment of any proposed development of the waters for this purpose. I am sure that the one thing we want to do is to serve the state. Can we serve it best by limiting the grant of water rights to fifty years or leaving the question as an open matter for the legislature to deal with? The committee adopted the view that it would be better, under the circumstances, recognizing the power of congress over all the navigable streams, to allow the waters still in the hands of the state to be subject to the powers of the legislature, because the legislature could adapt its actions to the needs and developments as they occur. If we put in the rigid form of a constitution this restriction we are absolutely bound by it unless we get an amendment to the constitution. Those are the things that moved the committee to its action.

Mr. PINCHOT. May I say just one word more as to why this should go into the constitution? It is one of the most fundamental things, the protection of forests. The time is coming ultimately when our oil will be gone, our coal will be at last exhausted, and when water will be most commonly used as a source of power. We know that the man who controls power controls Pennsylvania and all the rest. Therefore it is one of the half dozen fundamental questions in the natural resource line that can come before the people of the state. It seems to me it is entirely proper that it should go into the constitution. I venture to say to the senator that where he and the committee had one expression of opinion on the part of water power men that they would not develop under a fifty-year limitation, I have fifty, and the result has been development and not stagnation.

Mr. TYSON. If I understand this discussion, it would seem that this section 9-A seems to carry and exercise control of the streams which have not been declared navigable, and provisions of the constitution of United States covers navigable streams. If that understanding is true, it seems to me eminently fitting that we put this provision in our constitution.

MR. FISHER IN THE CHAIR.

Mr. SCHAFFER. Mr. Chairman: I think that I am possessed of some facts that the commission ought to have before it before it acts on this section, because it is a very important section. One of th great engineering concerns of the country has been to see me, and told me that they are now engaged in experimental studies by which they hope to work out successfully a scheme which would mean a great utilization of the water powers in Pennsylvania. They say they will not conduct their experiments and spend the money that is to be spent in carrying them forward if a limitation of fifty years is put in our constitution as a rigid constitutional enactment, because they could not finance a proposition if they did successfully work out their engineering problems on a fifty-year limitation. The proposition which they are endeavoring to work out is to take water powers that are not now utilizable for two reasons. First, because the power which they will generate is not today a commercial power, and secondly because the power that exists is not utilizable at certain times of the year because of ice. Their proposition is that they will devise machinery that will so greatly augment the now unavailable power of streams in Pennsylvania that those streams can be made usable for power. I do not know just exactly how that is to be done, but my general understanding is that it is to be done on the development of the turbine principle, so that a stream which now will produce one hundred and fifty horse-power, by the machinery that will be applied to that stream will develop, let us say, four times or five or ten times that horse-power. Furthermore they tell me that the great bulk of Pennsylvania streams are not usable because for a long period in the winter time they are choked with ice. They are working on a proposition to prevent the slowing down or lowering of the water power that is consequent upon the accumulation of ice. They tell me that the problem in Pennsylvania is an entirely different problem from the great water problems of the west, or like the water problems of some of the rivers where enormous power is developed and where the water runs all the year. They tell me that the problems are entirely different in North Carolina, where the ice factor does not enter so largely. I think I am within the bounds of correct statement, Mr. Chairman, in saying that one of the water power companies that is in existence in the state, after having installed its power plant, found that it was essential in the winter time, in order to supply power to the people who would like to use that power, that they should, in addition to the water plant, put in a steam plant, and putting in a steam plant means that the enterprise is not a commercial success. Now it may be, that at some future time when the development takes place, it should be declared the public policy of the state that the grants to water companies ought not to be for a longer time than fifty years. But as the

water power of Pennsylvania stand today, most of it is not usable. You could put a water power plant in the Susquehanna river every mile almost, as I understand it. You can put a water power plant at the point where the slack water of the plant below ceases to reach the plant above. Now, if we can work out a plan to use all the water power of the state, the thing to do it seems to me is that which will promote it. I am only conveying to the commission that which has come to me from one of the greatest of all the engineering concerns of the country, that, so far as they are concerned, such a provision would mean the absolute end of the experimental work in which they are now engaged, and which they informed me is very nearly finished. In the solution of the water-power problem in Pennsylvania, therefore, it does seem to me that it is a very important question, and to rigidly say that no water-power grant shall be made in Pennsylvania for a longer term than fifty years might mean the stopping, for a number of years at least, of the experiments that are now going on, and the ultimate use of powers that can be made useful. This whole question of public policy, if the utilization of the powers is to be worked out, could be taken care of by legislation.

Mr. PINCHOT. I hesitate to take the attention of the commission longer, but I do want to say, with all respect to the atorney general, that what he has just told you is most familiar to me. I have had men come to me in the same way over and over again. It is what the boys call "old stuff," that we have constantly heard. These water power developers tell how satisfactory their projects are, that their's are different from any body else's, and therefore their's should have special consideration. I want to call the attention of the Commission to the fact that the proposition to abandon a policy worked out as carefully as any policy ever was in the matter of natural resources proven in operation is on the basis, first, on the representation of power companies, which we all know about for years past, and, secondly, on the basis of an experiment which may or may not work out. There is no question but that the public interest will be protected by this fifty-year limitation, and every question whether development will be ended because it is the regular stock in trade of the water power companies that they will not develop under such circumstances, and yet development has been unbroken after limitation has been made.

Mr. SULZBERGER. I speak from a point of ignorance on these specific questions, but the general question that does appeal to me is: Here lies one of the great powers of the state for the welfare of this generaltion and of future generations. Water will undoubtedly at some time or another become one of the great factors of life. Now, it is said that this limitation of fifty years, which, by the by, under the terms of the amendment would not be limited to fifty years, because it could be renewed, there is nothing to prevent the granting to the same corporation of the power, not a thing. They can only have it for fifty years at a time, and the idea of transferring so transcendent a power of the state to private corporations is not to be welcomed very easily. Then there is another aspect which the remarks of the attorney general forcibly impressed me with, namely, that this water power is at least of two great grades, one better and one worse, and that Pennsylvania is in possession of the inferior grade. You may depend upon it that by the highest

law of economics the superior grade will have the advantage earlier than the inferior grade, they will become more rapidly exhausted, and that then the inferior grade will have a position superior to the present grade of the superior, and it would be a highly unwise thing for future generations to barter away this right of our commonwealth to a private corporation, and at any rate fifty years is a long period; and even if the constitution is of iron, there will be another constitutional amendment within fifty years, and we always have the legislature, and behind them the pople. I do think that when we part with a great power like this, fifty years ought to be an ultimate limit for reconsidering and determining whether it shall be continued or not.

On the question recurring,

Will the committee agree to the motion to adopt the recommendation of the committee to omit this section?

It was not agreed to.

On the question,

Will the committee agree to the section as reported?

It was agreed to.

ARTICLE XVII, SECTION 10.

The committee of the whole proceeded to the consideration of section 10 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

SECTION 10. ACCEPTANCE OF THESE ARTICLES.

NOTE.

Omitted.

In the present constitution, this section reads:

"No railroad, canal or other transportation company, in existence at the time of the adoption of this article, shall have the benefit of any future legislation by general or special laws, except on condition of complete acceptance of all the provisions of this article."

This section is a mere repetition of the more comprehensive provisions on the same subject in article XVI, section 10-A, as proposed (article XVI, section 2, of the present constitution).

On the question,

Will the committee adopt the recommendation of the committee on style to omit this section?

It was adopted.

MR. SCHAFFER IN THE CHAIR.

ARTICLE XVII, SECTION 12.

The committee of the whole proceeded to the consideration of section 12 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

SECTION 12. ENFORCEMENT OF THIS ARTICLE.

NOTE.

Omitted.

In the present constitution this section reads:

"The general assembly shall enforce by appropriate legislation the provisions of this article."

There is no more reason for the imposition on the general assembly by express words of a duty in respect to this article than there is to impose a similar duty on the general assembly in respect to other articles. The effect of this section is to tend to weaken the obligations of the general assembly to "enforce by appropriate legislation" the provisions of other articles in which a similar provision is not found. It also tends to raise a doubt whether any of the provisions of this article, irrespective of the language used, can be regarded by the courts as in force in the absence of "appropriate legislation."

Special Note to the commission by the committee on style.

The commission's attention is called to the fact that the committee have omitted this section. The omission or retention of the section is a question of style, as the section makes no substantive provision not otherwise in force.

On the question,

Will the committee adopt the report of the committee on style to omit this section?

Mr. FISHER. Mr. Chairman: I move the adoption of the recommendation of the committee.

Mr. GORDON. I should hope not. There is substance in the adoption by the people in their constitution of a clause mandatory in its nature directing the legislature to carry out the provisions of the constitution by appropriate legislation. A constitutional provision which does not execute itself is rather *brutum fulmen,* and the direction of the people that the constitutional provisions shall be carried into statutory enactment so as to give them force and effect is equivalent to a referendum, and referendums are now popular since last week. I am quite solemn when I say that this would be in effect a declaration by the people referring to the legislature the duty of carrying into effect a constitutional mandate.

Mr. SULZBERGER. Judge Gordon, don't you think that in order to carry out your idea that the limitation might be omitted so as to impose upon the legislature the duty of making appropriate legislation on all subjects within their jurisdiction under the constitution?

Mr. GORDON. Well, probably so. The reason for putting it in this article was a very clear one. This article was intended to be a limitation upon corporations, imposing duties upon corporations which thereafter would exercise an appeal upon legislative bodies, and very often constitutional mandates were nugatory. Therefore, in order to overcome what might be the reluctance of legislative bodies to pass laws governing these public servants, it was thought that article XVII should make a specific mandate, and I hope it will be maintained in this article.

Mr. FISHER. In making the motion to adopt the recommendation of the committee, I have no judgment to express in the matter. It does seem to me an obsolete provision. It is true that it originated because of the strong feeling that existed at the time of the adoption of the constitution of 1874 against corporations and under fear of the powers exercised by corporations over legislative bodies. There is no objection to this commission saying what its thought may be on the matter of enforcing enabling acts. It is merely directory. If it is proper, we had better make a general expression that all the provisions in the constitution shall have appropriate legislative enactment.

On the question recurring,

Will the committee adopt the report of the committee on style to omit this section?

It was not adopted.

ARTICLE XVIII, SECTION 1.

The committee of the whole proceeded to the consideration of section 1 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

AMENDMENT OF CONSTITUTION.

1 Section 1. An amendment to this constitution may be proposed in the
2 general assembly. If agreed to by a majority of the members elected to each
3 house, it shall be entered on the journals with the names of the members voting
4 for and of those voting against, and the secretary of the commonwealth shall
5 cause it to be published once a week for thirteen weeks immediately preceding
6 the next general or municipal election in at least two newspapeers in every
7 county in which newspapers shall be published. If it shall be likewise agreed
8 to by the next general assembly, the secretary of the commonwealth shall cause
9 it to be published again as aforesaid, and it shall be submitted to the electors of
10 the commonwealth in such manner, and at such time, at least three months after
11 it has been so agreed to, as the general assembly shall prescribe. If it shall be
12 approved by a majority of the electors voting thereon, it shall become a part of
13 the constitution. When two or more amendments are submitted to the electors
14 at the same time, they shall be voted upon separately. No amendment shall be
15 submitted oftener than once in five years.

NOTE.

Source: Article XVIII, section 1:

"Any amendment or amendments to this constitution may be proposed in the senate or house of representatives; and, if the same shall be agreed to by a majority of the members elected to each house, such proposed amendment or amendments shall be entered on their journals with the yeas and nays taken thereon, and the secretary of the commonwealth shall cause the same to be published three months before the next general election, in at least two newspapers in every county in which such newspapers shall be published; and if, in the general assembly next afterwards chosen, such proposed amendment or amendments shall be agreed to by a majority of the members elected to each house, the secretary of the commonwealth shall cause the same again to be published in the manner aforesaid; and such proposed amendment or amendments shall be submitted to the qualified electors of the state in such manner, and at such time at least three months after being so agreed to by the two houses, as the general assembly shall prescribe; and, if such amendment or amendments shall be approved by a majority of those voting thereon, such amendment or amendments shall become a part of the constitution; but no amendment or amendments shall be submitted often than once in five years. When two or more amendments shall be submitted they shall be voted upon separately."

Changes in Substance: The required advertisement may precede either a general or a municipal election. Under the present constitution, it must precede a general election. The change is made for the following reasons:

The general assembly meets and municipal elections are held in odd-numbered years. General elections are held in even-numbered years. If an amendment is agreed to by the general assembly in 1921, it will be advertised three months preceding (and this is taken to mean "for three months immediately preceding") the general election of 1922. If the amendment is again ratified in 1923, it cannot, under the present constitution be advertised until 1924. The commission believe that the electors should have an opportunity to pass on the proposed amendment at the first election after its second approval by the general assembly, i. e., the election of 1923.

Clarifying Amendments: The language of the present constitution as to advertisements is ambiguous. The commission therefore recommeend substituting the words "to be published once a week for thirteen weeks immediately preceding the next regular election." This change is approved by the secretary of the commonwealth.

Changes in Style: The commission's rules of style have been followed.

Special Note to the commission by the committee on style.

Recommendation of Change In Substance.

(1) Strike out, line 5, "thirteen" and insert "four."

Your committee believe the provisions in the present constitution entails a very considerable unnecessary expense.

(2) Strike out, on line 6, after "general" "or municipal."

Strike out, lines 9 to 11, inclusive, and line 11 through "prescribe," and insert: "in the manner aforesaid for four weeks immediately preceding the

first general or municipal election which shall first occur not less than three months after such agreement, and it shall be submitted at such election to the electors of the commonwealth in such manner as the general assembly shall prescribe."

Your committee do not believe that the commission intended to provide that the amendment when passed for the first time should be advertised at any time other than immediately before the election of the members of the next general assembly. The main object of such advertisement is to enable the electorate to know, if they desire to know, the attitude of the candidates on the proposed amendment.

The above amendments are suggested to fully carry out what we understand to be the desire of the commission, namely that the electorate shall vote on an amendment twice agreed to by the general assembly at the next state or municipal election whichever first occurs after the amendment is agreed to.

(3) Omit on lines 14 and 15 the words "No amendment shall be submitted oftener than once in five years."

This provision is ambiguous. If it means simply to prevent the submission within five years of an exactly similar amendment it can readily be circumvented by the change of a word. If it means to prevent the submission within five years of an amendment which would have precisely the same effect as the rejected proposition, there may be grave doubt as to whether a particular amendment will or will not have precisely the same effect as one submitted within five years and defeated. If it means to prevent the submission within five years of an amendment on the same general subject, it not only opens the door to doubt and litigation, but if held to apply in a given situation, might cause serious injury. For example, the recent amendments with respect to municipal borrowing power in Philadelphia might have been held invalid under such an application of the section.

Your committee believe that the length of time required to bring a proposed constitutional amendment to fruition is in itself a sufficient guaranty against hasty and ill-advised change.

On the question,

Will the committee adopt the section as reported?

The CHAIRMAN. The recommendations of the committee on style of change in substance are to amend by striking out in line 5 "thirteen" and inserting "four"; strike out in line 6 after "general" the words "or municipal"; strike out lines 9, 10 and 11 to the word "prescribe" and insert "in the manner aforesaid for four weeks immediately preceding the first general or municipal election which shall first occur not less than three months after such agreement, and it shall be submitted at such election to the electors of the commonwealth in such manner as the general assembly shall prescribe."

On the question,

Will the committee adopt the amendments?

They were adopted.

The CHAIRMAN. The other amendment suggested by the committee on style is to omit in lines 14 and 15 the words "No amendment shall be submitted oftener than once in five years."

On the quesetion,

Will the committee adopt the amendment?

Mr. GORDON. I would like to hear the reason of the committee for suggesting these amendments.

The CHAIRMAN. The question was raised, I happen to know, by a member of the constitutional convention of 1874, that this is denying the right to make any amendments, not a similar amendment, but any amendment of any kind oftener than once in five years. Now, practically it is four years before an amendment can be submitted, going through two legislatures and being submitted to the people, and in order that that question may not arise as a plagning question, we thought that it better be stricken out.

Mr. GORDON. Can not the provision be made clear so that only the same amendment can not be presented oftener than once in five years? There are some potential reasons why the same amendment should not be before the electors every two years.

The CHAIRMAN. I think that would take care of it; yes, sir.

Mr. FISHER. There was some division of opinion as to the meaning of the provision in the old constitution. When did the five years date from, the time the amendment was proposed or the time it was finally acted upon? It was never decided, and it is an open question. We thought it well to drop the provision for that reason, and for the other reason that perhaps it makes it easier to propose amendments and to renew the proposition. They must come before the legislature at two sessions, and then they come up at an election. It is practically five years from the time they are first proposed until they are acted upon finally, and we simply thought it was a liberalization of the provisions for the amendment of the constitution.

Mr. GORDON. It seems to me those reasons are good for retaining this provision. There are two referendums required before the constitution can be amended, and there is no doubt about that. Now, if in those two refrendums the people reject an amendment, there ought to be a hiatus for a reasonable time on that amendment anyway. Constitution-makers, constitution-thinkers are very persistent people, and if they are given their choice every five years, I think that is a check, especially if the people have twice said "no" on a referendum, so that this amendment can be clarified, and made quite clear to the committee on style.

The CHAIRMAN. It is rather difficult to clarify it, Judge Gordon. I have tried it. There is a bill in equity filed under this provision. The bill was withdrawn. It was filed within this year, and then it was the contention that it was impossible to amend the constitution in any respect within a period of five years after the last amendment had been voted upon. I do not think that is the intention of this language. I endeavored to draw an amendment as covering the other thought.

Mr. GORDON. I think that bill in equity was promptly abandoned. Was it ever passed upon by a court?

The CHAIRMAN. No, it was not; it was withdrawn.

Mr. GORDON. I do not think it would have had the slightest chance. I have not had an opportunity to carefully look into the matter; but why can not the language be used, "within five years of its final rejection"?

The CHAIRMAN. In making the same amendment?

Mr. GORDON. Yes; "within five years after its final rejection," or equivalent language.

The CHAIRMAN. Let us try that; "within five years after the date of its final rejection no amendment of similar import shall be submitted."

Mr. GORDON. Within five years after the date of its rejection?

The CHAIRMAN. Within five years after the date of its final rejection.

Mr. GORDON. I ask the chair, who has looked into this question, of course, is there chronologically a time when this amendment is finally rejected?

The CHAIRMAN. Election day.

Mr. GORDON. That would fix the time?

The CHAIRMAN. There is only one popular vote, only one popular vote after voted on by two legislatures.

Mr. SULZBERGER. Mr. Chairman: I confess I never had any doubt about the meaning of that clause, but that bill in equity has had the effect of rather impressing upon my mind the wisdom of adopting the suggestion of the withdrawn bill in equity. Why, what is the tremendous haste by which we need any amendments within five years? What would be the real trouble if we should interpret it to mean that there shall not be any amendments within five years?

Mr. GORDON. Mr. Chairman: I move that this amendment be changed to read, "Within five years after its final rejection no amendment of similar import shall be submitted."

Mr. REED. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the committee adopt the section as amended?

It was adopted.

ARTICLE XVII, SECTION 2.

The committee of the whole proceeded to the consideration of section 2 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

CONSTITUTIONAL CONVENTION.

Section 2. A new constitution, or amendments to this constitution or a revision thereof may be proposed by a convention authorized by law and composed of delegates chosen by the electors of the commonwealth. Such convention shall be held only with the approval of a majority of the electors of the commonwealth voting on the question of calling the convention. The new constitution, the amendments or the revised constitution proposed by the convention shall become effective only when ratified by a majority of the electors of the commonwealth voting thereon. The times and methods of such voting and election and the composition of the convention shall be prescribed by law.

NOTE.

Source: This is entirely new matter. After very careful consideration of the principles and precedents involved, the Commission have concluded that the method of change, amendment or revision upon recommendation of a constitutional convention should be embodied in the constitution itself.

The proposed section contemplates five steps in such a process:

1. An act of assembly directing a vote to be taken as to the desirability of holding a constitutional convention.
2. A vote favorable to the proposition.

(Constitutional conventions have been held in Pennsylvania and elsewhere without the approval of the electors; that is, the electors have simply been permitted by a statute to choose delegates, without first having an opportunity to approve or to disapprove of the holding of a constitutional convention. In view, however, of the prevailing modern practice, and of the doubt felt by the commission as to the validity of a convention held without such approval, the second sentence of the proposed section is recommended.

It will be observed that it would be feasible, under the proposed section, to place before the electors at the same election, the question of holding a convention and the choice of delegates.)

3. The election of delegates to the convention.
4. The submission of proposals by the convention of the electors.
5. A vote favorable to the proposals.

The constitutions of Pennsylvania of 1776 and of 1790 were promulgated by the constitutional conventions which drafted them. But the universal modern practice is to require the proposals of the convention to be approved by the electors. The commission therefore recommend that such approval be expressly provided for in the constitution.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE XVIII-A, SECTION 1.

The committee of the whole proceeded to the consideration of section 1 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

KINDS OF MUNICIPALITIES.

1 Section 1. Municipalities shall be counties, cities, boroughs, townships,
2 school districts, poor districts and all divisions of the commonwealth with
3 ordinance-making power for the purpose of local government.

NOTE.

Source: This is entirely new matter. The word "municipality" occurs so frequently in the proposed constitution, and especially in this article, that a definition is plainly imperative. We have enumerated the present forms of municipality and have allowed for the creation of other forms in the concluding words of the proposed section.

Special Note to the commission by the committee on style.

The words "all divisions of the commonwealth with ordinance-making power, for the purpose of local government," have been substituted for "other civil divisions for the purpose of local government." The latter form of expression would include wards and other subdivisions of cities or boroughs created not for the purpose of governing themselves and yet answering to the description of "divisions for the purpose of local government."

The committee have inserted the words "poor districts" so as to complete the list of the present forms of municipality.

On the question,

Will the committee adopt the section as reported?

Mr. ENGLISH. Mr. Chairman: I move to strike out on lines 2 and 3 the words "with ordinance-making power," so that the section will read: "Municipalities shall be counties, cities, boroughs, townships, school districts, poor districts and all divisions of the commonwealth for the purpose of local government."

Mr. FOX. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVIII-A, SECTION 1-D.

The committee of the whole proceeded to the consideration of section 1-D as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

CLASSIFICATION.

1 Section 1-D. Municipalities may be classified upon the basis of conditions
2 requiring special regulation. The coincidence of the boundaries of two or more
3 municipalities shall be deemed a condition requiring special regulation.
4 The classification of municipalities according to population shall not divide
5 cities, counties or school districts into more than seven classes, or other munici-
6 palities into more than five classes.
7 A law otherwise general shall not be local because applicable only to munici-
8 palities adopting it.

NOTE.

Source: This is entirely new matter. The present constitution, in article III, section 7, and the proposed constitution, in article III, section 26-C, forbid special legislation regulating the affairs of a municipality. The supreme court has held that a law applicable to an entire class of municipalities is not special if there is a proper relation between the purpose of the law and the basis of classification. (Wheeler v. Philadelphia, 77 Pa. 338.)

There is, however, grave doubt as to the extent to which such classification is permissible, especially classification based upon population, which is by far the commonest form. The effect of the decisions of the supreme court has been to restrict the division of cities to three classes. A greater number of classes has been permitted for other municipalities, but the precise number permissible for a given purpose is always doubtful until the question has been judicially determined.

The commission, therefore, recommend this section, which states in terms the number of classes according to population which may be created. The number for cities is recommended to be considerably increased.

The words, "and the coincidence of the boundaries of two or more municipalities shall be deemed a condition requiring special regulation," have been inserted to place beyond possibility of question the right of the law-making authority to treat the problem of local government arising where, as in Philadelphia, the boundaries of the county and the city coincide, as a problem of county government requiring, for its adequate treatment, a governmental organization adapted to that condition.

The third paragraph is recommended to be inserted out of caution. The commission believe that it should be possible to enact a law regulating the affairs of such municipalities as might adopt it by ordinance or by popular vote, and that such a law should not be open to the objection that it is special because of its tendency to destroy uniformity or to the objection that it delegates legislative power; but unless the suggested sentence is incorporated in the constitution, it is doubtful whether such a law would be sustained by the supreme court.

Special Note to the commission by the committee on style.

As adopted by the commission this section was numbered article III, section 7-A.

We have transferred it to municipalities because it relates only to municipalities.

The committee's understanding is that as adopted by the commission this section read:

"No law shall be held to be a local or special law which operates equally upon every member of a class. The general assembly may classify municipalities but shall not create more than seven classes of cities, counties or school districts, nor more than five classes of any other municipality upon the basis of population. The general assembly may classify municipalities upon the basis of conditions requiring special regulation, including the basis of coincidence of boundaries of different municipalities, or other relations between them requiring special regulation.

"No law shall be held to be local or special which, being otherwise of a general nature, does not go into effect as regards any particular municipality until affirmatively adopted by the authorities or people of said municipality as provided by law."

The commission will note that we have omitted the first sentence. This sentence was an attempt to express the present law, but it plainly goes too far, because it requires no connection between the basis of classification and the purpose of the law. Under its provisions a law would be valid which required all persons over thirty years of age to pay a tax not paid by others.

Recommendations of Change In Substance.

Strike out paragraph 1.

While it is true that the first sentence in the first paragraph, "Municipalities may be classified upon the basis of conditions requiring special regulation," follows closely the principle of permitted classification enunciated by the supreme court, we are afraid that any attempt to state a principle on which proper classification may be based may be interpreted as changing existing law. This, we understand, was not the intent of the members of the commission.

The special cause for the insertion of the provision in lines 2 and 3, "The coincidence of the boundaries of two or more municipalities shall be deemed a condition requiring special regulation," was, we understand, the desire on the part of the commission to permit a law applying only to the county of Philadelphia to be enacted, so that special provision might be made for county offices in Philadelphia. Subsequently, the commission adopted section 6-C, which meets in a more direct way the situation in Philadelphia, that section permits any constitutional county office to be abolished and its duties

and powers transferred to a city officer or officers. Furthermore, the coincidence of the boundaries of two or more municipalities would not, so it seems to your committee, always justify special legislation on all subjects pertaining to either municipality.

On the question,

Will the committee adopt the section as reported?

The CHAIRMAN. There is some confusion in the record, which was called to the attenton of the committee on style, as to just what was adopted by the commission on this section. This is the committee's understanding of what was adopted, and there is a recommendation of the committee on style to strike out paragraph 1 of this section, so that the classification would be made only on the basis of population.

Mr. ENGLISH. Mr. Chairman: As I understand it, the recommendation is that the first section, or rather the first sentence of paragraph two of section 7-A of article III of the proceedings of May 20th be stricken out. The sentence is this, "No law shall be held to be a local or special law which operates equally upon every member of a class." It was the sense of the committee, as I understand it, that the language in that sentence was so very vague as to be a source of endless confusion, and on that account it should be stricken out. I move that the recommendation of the committee be concurred in.

Mr. FISHER. I second the motion.

On the question,

Will the committee agree to the motion?

The CHAIRMAN. The recommendation of the committee, as the chair understands it, is to strike out paragraph one of the section as reported by the committee on style.

Mr. SULZBERGER. That is something totally different from what has just been said.

The CHAIRMAN. Yes, sir.

Mr. GORDON. May I inquire what is the origin of that clause? I can not find it in any section of the commission, the clause proposed to be stricken out. Where does it appear as having been adopted by the commission?

The SECRETARY. The commission took action on this section on May 11th; one was the adoption in regard to this particular matter, or the committee's understanding was that the section which they really intended to adopt, the last one, was the one which appears under the special notes by the committee on style. In that section, or in that clause, there was the first sentence, "No law shall be held to be a local or special law if it operates equally upon every member of a class." The committee has explained in the first paragraph of its explanation that they have omitted that wording on the ground that it apparently would, as there stated, introduce a provision that a law would be valid which required all persons over thirty years of age to pay a tax, not to be paid by others. Therefore that first sentence has not been included in the section as it appears. The committee, recommended that the entire first paragraph as adopted by the commission and as reported by the committee on style be stricken out, so that there would be no provision for classification in this constitution, except the provision that when the classification was based on population there should be not more than seven classes of cities, counties or school districts, and not more than five classes of other municipalities.

Mr. GORDON. I am happy to move the adoption of the recommendation of the committee on style and that the first clause be stricken out.

Mr. SULZBERGER. Except I think you had better retain some of the words, or there will be no power to classify municipalities except by inference.

Mr. REED. You would only strike out the first sentence?

Mr. SULZBERGER. The first line in the first sentence is nowhere reproduced, that municipalities may be classified.

Mr. CUYLER. This is a most important provision bearing upon suburban districts, or the districts near Philadelphia. We have, for instance, on the main line what is called the main line suburban association. That association begins in the township of Lower Merion, Montgomery county, and Haverford and Radnor township, in Delaware county. Those three townships are practically one, that is to say, they are so interwoven that it is impossible to regulate one without regulating the other. Now, in Lower Merion township we have a well-developed sewerage system, and all that, and Radnor township, in Delaware county, has some, but not to the same extent. Haverford has very little, and yet they are so involved in sanitary conditions that it is impossible to separate them. At a meeting of this association, of which I happend to be the president, which is representative of these three townships, I was instructed to urge upon the commission that such provision in the constitution be made that legislation could be passed that in cases like this the townships could act as a unit, and it seems to me if the provision suggested by Judge Gordon is stricken out and nothing takes its place, it might seriously interfere with such concentrated action as we should like in that case.

Mr. GORDON. I do not think this would touch that question at all, Mr. Cuyler.

Mr. CUYLER. I think it does. I have not seen anywhere in the constitution any provision which meets this condition, and it seems to me very important.

Mr. REED. Mr. Chairman: I would move to amend by re-inserting the section as adopted by the commission. Change the first sentence at the end of the first paragraph so that it will apply to the classification of cities and not of people of over thirty years of age. In other words, changing the first sentence to the end of the paragraph, so it will read: "The general assembly may classify municipalities upon the basis of conditions requiring special regulation. No law shall be held to be a local or special law which operates equally upon every member of a class." It manifestly refers to those classes and not subjects. Would there be any objection to that?

Mr. ENGLISH. I do not understand, Mr. Chairman, that the recommendation of the committee was to eliminate entirely the first paragraph of section 1-D. I find upon examination of the records that that is the recommendation of the committee, and I rather hope that it will not be adopted. The supreme court in Wheeler v. Philadelphia, and in several others, gave a much broader construction to the existing classification section of the constitution, or rather the existing special legislation section than the committee would give to it. The supreme court there said substantially that the municipalities may be classified upon the basis of conditions requiring special

legislation, using almost exactly the language originally adopted in this section. Classification according to population is only one of the special conditions which may require classification. There are any number of others. It is easily conceivable that a given group of municipalities in a certain section of the state may have a problem which should be solved by legislation applying only to them, and on that account I do not see how it could be objectionable to rewrite in this section the test of classification which the supreme court has already approved of, and which is infinitely broader than the mere classification by population. Therefore I hope that section 1-D as reported by the committee on style will be adopted, and that the commission will approve of classification upon the basis of conditions requiring special legislation, and not make the test of classification the mere matter of difference in population.

The CHAIRMAN. In the section which appears under the note to the commission by the committee on style, if you leave out the first sentence, is not that the language that was adopted?

Mr. ENGLISH. Yes, sir.

The CHAIRMAN. Then the second paragraph of the section as adopted by the commission ought also go in?

Mr. ENGLISH. Yes, I think that has substantially been rewritten in paragraph 1-D. I think that paragraph 1-D says everything that is pertinent to section 7-A as adopted by the commission. It does eliminate the ambiguous sentence at the beginning.

The CHAIRMAN. Then your motion was to adopt the section as it is reported out by the committee on style?

Mr. ENGLISH. Yes, sir.

Mr. GORDON. I suppose the reason the committee recommended the elimination of this clause was its indefinite nature. Classification of cities or counties is classification for the purpose of legislation generally. If you put cities into classes then the legislature may without limitation legislate on all the cities in the class. Now, population is a reasonable and apparent reason for classification. When you, however, adopt such a provision as this "Municipalities may be classified upon the basis of conditions requiring special regulation," you really open the door for classification by units, and all you have got to do is to recite the special conditions which apply to one city and make that a class, and you might put that city in that class. "Conditions requiring special regulation," that does not limit, there is no limitation upon the minuteness of classification which might thus result. Instead, therefore, of the uniformity which I heard commented upon on this floor the last time this subject was debated—I heard Mr. Cuyler, for instance, deliver a most impassioned and certainly a very logical argument against anything that would destroy that uniformity in kind which ought to run through even, I think, the minutest sub-divisions, as boroughs and townships, so that we would not as we cross the political sub-dvision find ourselves under the operation of different laws. There may be communal requisites, the result of population, which would be a sane, reasonable and proper basis for classification, but special conditions applied to particular localities, a phrase like that is surely not a safe phrase to put into the constitution. Judge Reed says you would never know until the supreme court got through whether such classification was reasonable and proper, whether it was definite enough to be a suitable con-

stitutional enactment. I suppose that was the mental operation of the committee in recommending that this first clause be adopted. I still think that Mr. English on reflection ought to be able to adopt some more definite language that would prevent a classification of units into communities.

Mr. SULZBERGER. I have only to suggest again that if you strike out paragraph one there is no specific conferring upon the legislature of the power to classify municipalities.

The CHAIRMAN. Ought an amendment to that effect be written in that the general assembly may classify municipalities?

Mr. REED. Mr. Chairman: I thought I moved to amend by substituting the section as adopted by the commission with the changing of the first sentence. I do not know whether I had a seconder or not.

The CHAIRMAN. That substantially is the section as written except that the sentences are transposed.

Mr. THORPE. Mr. Chairman: I second Judge Reed's motion, if it is in order.

On the question,

Will the committee agree to the motion?

Mr. FISHER. The thought here was that the first clause opens up the way for any kind of classification at all the legislature might determine. Just as Judge Gordon says, there might be a classification on any sort of basis which the legislature might set up. The second clause fixes population as a definite basis upon which classification may be made, which is a limitation upon the power of the legislature as to the basis of classification for municipalities. That is what we had in mind, and we wanted to strike out this general provision and put something in that would give us solid standing ground.

The CHAIRMAN. I might call Mr. Cuyler's attention, and Mr. Cuyler is a lawyer, to the fact that I happen to be the solicitor of Lower Merion township, and that we have a classification of townships there on the basis of population. It does seem to me that your main line protective association may go glimmering, for the three township have the same form of government, townships of the first class. You take and classify them on some other basis, and Haverford would not know what the form of government is in Lower Merion.

Mr. REED. His problem is met by the subsequent section.

The CHAIRMAN. That takes care of the problem of Mr. Cuyler.

Mr. ENGLISH. I submit that sometimes in searching for simplicity and clearness in drafting a section in this instrument we are apt to sacrifice some other substantial benefits. I am not impressed with the weight of the argument that the legislature may run amuck on the classification of municipalities, because the supreme court has distinctly said in a number of cases that the classification must be based upon a clear distinction in requirements as to municipalities. In other words, the legislature could not and would not be permitted, by resorting to mere words, to evade a section in the constitution which prohibits certain legislation. There would have to be a substantial need, such as would satisfy the supreme court, that their condition required special regulation covering a class or community. At the present time I think we suffer from too much simplicity so far as classification is concerned throughout the municipalities of the commonwealth. At the present time we have only three classes

of cities. The legislature has prescribed a form of government for cities of the second class that is devised to meet the needs of communities which have upwards of a million people living in them. There are two cities in the commonwealth at the present time which have a population in excess of one hundred thousand people which are struggling to evade the provisions of the law which would impose upon them that sort of government suitable to populations ten times their size, and I think there ought to be some latitude which would enable the legislature not only to classify more liberally on the basis of population, but to take into consideration, when they appear, real distinctions between groups or communities which will require legislaton in the interest of those who require special regulation to meet special problems, and at the same time will not impose upon other municipalities which do not have those problems and which do not require the special legislative machinery which the first group must necessarily have in order to solve their difficulties. That has been the trouble with our municipalities all the time since the adoption of this constitution. It does not seem to me that there would be any harm in writing into the instrument the rule of conduct which the supreme court adopted years ago with regard to classification. The supreme court never said that classification must be limited upon the basis of population at all, and it is not the law at the present time. I do not think it is the thought of the people in Pennsylvania now that a narrower rule should be adopted in this present instrument with regard to classification.

Mr. GORDON. Does not this clause practically admit of special legislation? Might we not just as well admit of special legislation for cities as adopt this, that any city whose condition require special legislation might be legislated for? That is what it means, too, and, therefore, if adopted, we might as well adopt it with our eyes open and admit that the people are ready to go back to the method of special legislation for cities.

Mr. SULZBERGER. I think you ought to keep in mind, namely, that the provision incorporates a kind of semi-definition of special regulations. But the next sentence provides that the coincidence of boundaries of counties or municipalities shall be conditions requiring special legislation. That undoubtedly is for the guidance of the legislature to determine what kind of thing special regulations are, that they must not be mere fancies—

Mr. GORDON. That only creates one special condition.

Mr. SULZBERGER. I know, but it gives an example.

Mr. ENGLISH. If I may say a word in explanation in reply to Judge Gordon, I think the supreme court has made it very clear that they must not be mere fanciful conditions created by the language rather than by the proper grouping of the community in order to meet the true conditions requiring special legislation or special regulations. In other words, the supreme court will be, as it is now, the final arbiter as to just when these conditions exist. There may be any number of instances in this respect, as cited by Judge Sulzberger, where in the course of time other conditions aside from the coincidence of boundary might make it necessary, certainly desirable, that a certain kind of legislation be passed applicable only to those communities in which those conditions exist, and to that extent I do not think we need to be terrified by the spector of special legislation.

On the question recurring,

Will the committee agree to the motion to adopt the recommendation of the committee to strike out paragraph 1?

It was not agreed to.

On the question recurring,

Will the committee agree to the motion to substitute.

The CHAIRMAN. Then the question is on the motion of Judge Reed, which I understand to be acceptable to Mr. English, to substitute for the section as reported out by the committee the section as heretofore adopted by the commission which will be found in the note of the committee to the commission, omitting the first sentence.

Mr. REED. I think that first sentence should be put at the foot of the first paragraph, because it manifestly applies to cities.

The CHAIRMAN. Is not that covered by what is contained in the second paragraph of your amendment?

Mr. REED. Mr. Chairman: I guess maybe it is. I moved to adopt the sentence as adopted by the commission by striking out the first sentence.

On the question recurring,

Will the committee agree to the motion to substitute?

It was agreed to.

Mr. GORDON. Mr. Chairman: Is that the whole section?

The CHAIRMAN. That substitutes the section as adopted by the commission.

Mr. GORDON. Does this still permit the classification according to conditions requiring special regulation?

The CHAIRMAN. Yes, sir.

Mr. GORDON. Mr. Chairman: I suggest then the addition of this sentence to this section: "No class shall be created under this section containing only one city."

Mr. SULZBERGER. Or other sub-division.

Mr. GORDON. Or other sub-division.

The CHAIRMAN. One municipality, I suppose.

Mr. GORDON. Very well, only one municipality.

Mr. ENGLISH. It seems to me the obvious objection to that is that it perhaps destroys the purpose of this section which provides for special regulation by boundaries.

Mr. GORDON. I offered that distinctly for the purpose of finding out whether the purpose was to allow legislation for one city, special legislation for one city, and Mr. English has stated that that is exactly what this clause now adopted is for. Now, let us vote upon it with our eyes open. It is intended to allow cities to be legislated for separately and individually. Let us vote for it intelligently, and not be beclouded, but make this clear, so that the people will know what they are voting for when it is adopted.

The CHAIRMAN. I would like to move this amendment: "shall not apply to cities of the first class." We must legislate for Philadelphia.

Mr. GORDON. If my amendment is properly placed in the section it will not relate to population.

Mr. ENGLISH. How does the amendment read now?

The CHAIRMAN. The secretary would like to be informed where the amendment is to be inserted.

Mr. GORDON. At the conclusion.

The CHAIRMAN. As it is now, and adding, "No class shall be created under this section containing only one city?"

Mr. GORDON. At the end of the substituted section. The last sentence of that section is "The general assembly may classify municipalities upon the basis of condition requiring special regulaton, including the basis of coincidence of boundaries, of different municipalities, or other relations between them requiring special regulation, provided that no classification under this clause shall be made containing only one municipality."

The SECRETARY. Under this section?

Mr. GORDON. Yes, sir.

Mr. SULZBERGER. How do you define classes there?

Mr. GORDON. On this basis according to special conditions which shall contain only one municipality.

Mr. ENGLISH. I should be very glad to second that amendment.

On the question,

Will the committee agree to the amendment?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVIII-A, SECTION 1-E.

The committee of the whole proceeded to the consideration of section 1-E are reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

PROPORTIONAL REPRESENTATION.

1 Section 1-E. Proportional representation may be prescribed by law for the
2 election of representative bodies in municipalities or in municipalities in which
3 that method of election shall be approved by a majority of the electors voting
4 on the question.

NOTE.

Source: This is entirely new matter. The commission believe that such laws would be valid under the present constitution, but they recommend that any dispute on the question should be prevented by the provisions proposed.

Special Note to the commission by the committee on style.

As adopted by the commission, this section was the concluding part of article VIII, section 7. As the provisions embodied in the section proposed relate exclusively to municipalities, we have placed the section under **this article.**

On the question,

Will the committee adopt the section as reported?

Mr. REED. It is to be prescribed by law and then it is to be voted upon by the electors. I do not think it is very harmful.

Mr. SULZBERGER. What is proportional representation?

The CHAIRMAN. That has already been up before the commission.

Mr. GORDON. I understand that clause to be that the legislature may impose proportional representation upon a municipality, or if a municipality votes for proportional representation it is entitled to have it.

The CHAIRMAN. As I understand it, the legislature may impose it on a municipality provided the municipality votes in favor of it.

Mr. GORDON. It does not say that. It clearly does not say that.

Mr. REED. Strike out "or in municipailties," then you will have it right.

Mr. GORDON. That would do it.

Mr. FISHER. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVIII-A, SECTION 2.

The committee of the whole proceeded to the consideration of section 2 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

SECTION 2. CREATION OF BOUNDARIES.

Special Note to the commission by the committee on style.

As adopted by the commission, this section read:

"The general assembly may provide by general law only for the creation, division and change of boundries of municipalities."

We have omitted the section because it is covered in substance by the provisions of article III, section 26-C, clause (a), which provides that no local or special law shall be enacted "regulating the affairs of a municipality."

On the question,

Will the committee adopt the report of the committee on style to omit this section?

It was adopted.

RECESS.

Mrs. MILLER. Mr. Chairman: I move that the committee of the whole now take a recess until 2 o'clock P. M.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon at 1.05 o'clock P. M. the committee took a recess until 2 o'clock P. M.

AFTER RECESS.

The committee of the whole reconvened at 2 o'clock P. M.

The Chairman, William I Schaffer, in the Chair.

The CHAIRMAN. The hour fixed for the reconvening of the committee of the whole having arrived, the committee will be in order.

ARTICLE XVIII, SECTION 1.

Mr. GORDON. Mr. Chairman: I move that the vote by which section 1 of article XVIII was adopted be reconsidered.

Mr. FOX. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question recurring,

Will the committee agree to the section?

Mr. GORDON. Mr. Chairman: I was asked by the secretary if I would endeavor to draw a clause on the subject of the provision for amendments to the constitution which would be clear and remove the doubt of the existing amendment. The present language is as

follows: "No amendment shall be submitted oftener than once in five years," and the doubt exists whether that does not mean that the constitution shall not be amended oftener than once in five years. I submit this as a solution of that: "If any amendment submitted to the electors should not be approved by a majority thereof no amendment substantially the same shall again be submitted to the electors within five years."

The CHAIRMAN. Do you offer that as an amendment to section 1 of article XVIII?

Mr. GORDON. I would like the secretary to look at it and see if it does not meet the proposition in lieu of the last sentence.

The SECRETARY. This, as I understand it, is a substitute for the amendment that was passed earlier, "No amendment shall be submitted oftener than once in five years," and this is to be added at the end of section 1, "When any amendment submitted to the electors shall not be approved by a majority voting thereon, no amendment substantially the same shall again be submitted to the electors within five years."

Mr. FOX. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE V, SECTION 3-G.

Mr. FOX. Mr. Chairman: I move that the vote by which section 3-G of article V was adopted be reconsidered.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question recurring,

Will the committee agree to the section?

Mr. FOX. Mr. Chairman: Yesterday when we had under consideration section 3-G of article V, on my motion lines 4, 5, 6 and 7 were stricken out. I since have been advised that this was prepared, or that some of the judges of the supreme court have been consulted as to the language of this section, and that it meets with their approval. I therefore move that the lines 4, 5, 6 and 7 which were stricken out yesterday be reinserted.

Mr. REED. What section is that?

The CHAIRMAN. Section 3-G of article V.

Mr. FISHER. Mr. Chairman: I second the amendment.

On the question,

Will the committee agree to the amendment?

Mr. PINCHOT. Can we have it read, Mr. Chairman?

The SECRETARY. The amendment, as the secretary understands it, is to restore that part of section 3-G which follows the word "records," so that the entire paragraph of the section will read: "In the discharge of these duties it may regulate forms of action, pleading and practice, proof, the keeping of judicial records, and the conditions under which fees and costs may be remitted and counsel assigned without expense to litigants, and may regulate the activities of any public or private agency rendering legal aid."

Mr. REED. I thought that the court of common pleas had that power, as it was finally amended.

Mr. FOX. As I understand it, it is intended simply to provide that the supreme court may make rules regulating this matter.

On the question recurring,

Will the committee agree to the amendment?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVIII-A, SECTION 3.

The committee of the whole proceeded to the consideration of section 3 as reported by the committee on style

The secretary read the section, notes and recommendations of the committee on style as follows:

NEW COUNTIES.

Section 3. A new county shall not be established if it would have less than three hundred square miles and fifty thousand inhabitants or if a line thereof would pass within ten miles of the boundary of a county seat of a county proposed to be divided or if its establishment would reduce another county below such area or population. A new county shall not be established without the consent of a mapority of the electors resident within the proposed boundaries thereof voting on the question.

NOTE.

Source: Article XIII, section 1:

"No new county shall be established which shall reduce any county to less than four hundred square miles, or to less than twenty thousanad inhabitants; nor shall any county be formed of less area, or containing a less population: nor shall any line thereof pass within ten miles of the county seat of any county proposed to be divided."

Changes in Substance: (1) Because of the increase in the state's population since 1874, the commission recommend that four hundred square miles and twenty thousand inhabitants, which are the provisions of the present constitution, be changed to three hundred square miles and fifty thousand inhabitants.

(2) The last sentence contains new matter. The purpose of the provision is to prevent the formation of a new county by act of assembly without the consent of those most affected.

Clarifying Amendment: The present constitution forbids the line of a new county to pass "within ten miles of the county seat of any county proposed to be divided." The commission have adopted the construction put upon this clause by the attorney general in 1895 (County Seat, 4 D. R. 319), by using the words "boundary of the county seat."

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

Mr. THORPE. Mr. Chairman: I wish to submit a modification of that.

The substitute as offered by Mr. Thorpe was read by the secretary as follows:

> A new county shall not be established if it would have less than two hundred square miles and fifty thousand inhabitants, and the county seat of such new county be within ten miles of the boundary of the county seat of a county proposed to be divided, or if its establishment would reduce another county below such population. A new county shall not be established without the consent of a majority of the electors resident within the proposed boundaries thereof voting on the question.

Mr. REED. Mr. Chairman: I second the substitute for the purpose of finding out what it is.

On the question,

Will the committee agree to the substiute?

Mr. THORPE. I did not write this. It was written by an attorney from Cambria county. It was submitted on its merits.

The CHAIRMAN. The chair's understanding is that it reduces the mileage of a new county to two hundred square miles instead of three hundred square miles. Is that correct, Mr. Thorpe?

Mr. THORPE. Yes, sir.

On the question recurring,

Will the committee agree to the substitute?

It was not agreed to.

On the question recurring,

Will the committee adopt the section as reported?

Mr. THORPE. Mr. Chairman: I wish to submit another substitute for the same section.

The substitute was read by the secretary as follows:

> A new county shall not be established if it would have less than two hundred square miles and fifty thousand inhabitants, or if its establishment would reduce another county below such population. A new county shall not be established without the consent of a majority of the electors resident within the proposed boundaries thereof voting on the question.

Mr. REED. Mr. Chairman: I will second the substitute to find out what the difference between the two is.

On the question,

Will the committee agree to the substitute?

Mr. FOX. I hope this substitute will not prevail. I think it is very important to retain the provision: "if a line thereof would pass within ten miles of the boundary of the county seat of a county proposed to be divided."

Mr. THORPE. It is right to explain in behalf of the parties interested. It was brought up in the commission before, this last one offered, to make it clear. The county of Cambria consists of two parts, of which the greater part is in Johnstown, and it is the desire of the people in that part of the country to have home rule, and the topographical character of the county makes access to the county seat very difficult and expensive, which moved the board of trade and others in that city and in the county to petition in this form, that a modification may be made so that the county of Cambria might be divided. I understand, Mr. Chairman, that is the basis of this request.

On the question recurring,

Will the committee agree to the substitute?

It was not agreed to.

On the question recurring,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE XVIII-A, SECTION 3-A.

The committee of the whole proceeded to the consideration of section 3-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

HOME RULE FOR CITIES.

1 Section 3-A. Laws may be enacted giving to cities or to cities of a particular
2 class, authority to frame, adopt and amend charters for their organization and
3 government.

NOTE.

Source: This is entirely new matter:

The commission do not recommend a constitutional provision giving this power outright to cities because it is impossible to frame such a provision so as to avoid doubt of its meaning. The organization and government of a city must, of course, conform to the laws of the commonwealth and any attempt to define in the constitution exactly where the powers of the commonwealth shall end and those of the city shall begin will give rise to endless litigation. The determination of the cities' powers of home rule must be by a carefully drawn statute, in which there will be a place for details not suitable for a constitution.

The section is inserted to overcome the present constitutional objection to such legislation, which is that it would be a delegation of legislative power and therefore unconstitutional.

Special Note to the commission by the committee on style.

As adopted by the commission this section was numbered article XVIII-A, section 1-A.

On the question,

Will the committee adopt the section as reported

The CHAIRMAN. The chair would like to inquire of the secretary if that is in the form that it was adopted by the commission.

The SECRETARY. You mean the exact language?

The CHAIRMAN. Yes, sir.

The SECRETARY. "The general assembly may delegate to all cities, or to all cities of a particular class, authority to frame, adopt and amend charters for the organization and government of such cities, subject to whatever limitations and regulations may be imposed by law."

The CHAIRMAN. The substance is the same.

On the question recurring,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE XVIII-A, SECTION 4.

The committee of the whole proceeded to the consideration of section 4 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

CREATION AND CHANGE OF BOUNDARIES OF CITIES AND BOROUGHS.

1 Section 4. A city or borough shall not be established or its boundaries
2 changed except with the consent of a majority of the electors resident within the
3 proposed boundaries voting on the question and of a majority of the electors
4 voting on the question in any proposed added or excluded area.

NOTE.

Source: This is entirely new matter recommended to be adopted to prevent the establishment of a city or borough, or the change of a city's or borough's boundaries, without the consent of those most affected.

There is a natural recognition in the present constitution of the principle that the electors affected should have a voice in deciding whether their local government should be changed to that of a city or borough. Article XV, section 1, provides: "Cities may be chartered whenever a majority of the electors of any town or borough having a population of at least ten thousand shall vote at any general election in favor of the same."

We recommend the omission of article XV, section 1, because its provisions have been covered by the much broader recognition of the principle of "home rule" embodied in the section here proposed.

On the question,

Will the committee adopt the section as reported?

Mr. FISHER. Mr. Chairman: As I understand the provision now, it requires a vote of the residents of the section proposed to be added

as well as a vote of the municipality to which the addition is to be made. In other words, it must be a double referendum.

The CHAIRMAN. The votes in the two sections must be taken.

Mr. FISHER. It seems to be a little superfluous to require the latter vote.

The CHAIRMAN. That is the proposition referred to us by the borough league.

On the question recurring,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE XVIII-A, SECTION 6-A.

The committee of the whole proceeded to the consideration of section 6-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

APPOINTIVE MUNICIPAL OFFICERS.

1 Section 6-A. Appointive municipal officers shall be appointed by an officer
2 or agency of the municipality as prescribed by law, except as in this constitution
3 expressly provided.

NOTE.

Source: This is entirely new matter.

The adoption of this section will prevent the enactment of a law vesting in the governor or other officer of the state government the power to appoint municipal officers. So-called "ripper" legislation, destroying existing municipal government and vesting its power in a commission appointed by the governor will be impossible.

The words "except as in this constitution expressly provided" are necessary because of the provisions of article V, section 21, as proposed, which permits the judges to appoint park commissioners and certain other officers, who are appointive officers of the municipality.

Special Note to the commission by the committee on style.

As adopted by the commission, this was part of section 7 of this article. In view of the various actions of the commission on section 7, it is not certain whether this provision was retained. We believe, however, that it was the intention of the commission to retain the section and that, with the amendment suggested below, it should be retained for the reasons stated in the note which we have appended to the section as proposed.

Recommendation of Change In Substance.

Strike out, on line 1 "municipal," and insert "in counties, cities, boroughs and townships."

Your committee suggest the amendment because they think it would be unwise to carry the principle embodied in the section to any municipality. It might, for instance, be advisable to have the governing body of a school district or of an incorporated district appointed by the government.

On the question,

Will the committee adopt the section as reported?

The CHAIRMAN. There is an amendment suggested by the committee on style to strike out in line 1 "municipal" and insert "in counties, cities, boroughs and townships." I might say that in some of the poor districts of the state a different method than that prescribed here for the appointment of directors of the poor is in vogue.

On the question,

Will the committee agree to the amendment?

Mr. FISHER. May I ask the secretary to read the section as it will read after amended?

The SECRETARY. The section as amended will read:

> Appointive officers in counties, cities and boroughs shall be appointed by an officer or agency of the municipality as prescribed by law, except as in this constitution expressly provided.

Mr. THORPE. The secretary did not say "and townships." Did you intend to leave that out?

The SECRETARY. It was an unintentional omission on the secretary's part. The words are "in counties, cities, boroughs and townships."

On the question recurring,

Will the committee agree to the amendment?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

Mr. FISHER. Mr. Chairman: May I call your attention to the word "expressly" in the third line; is it not intended to say otherwise provided? I move that the word "expressly" be stricken out and the word "otherwise" inserted.

Mr. FOX. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the committee agree to the section as amended

It was agreed to.

ARTICLE XVIII-A, SECTION 6-B.

The committee of the whole proceeded to the consideration of section 6-B as reported by the committee on style.

The secretary read the section, notes and recommendations of the commitee on style as follows:

ACCOUNTABILITY OF MUNICIPAL OFFICERS.

1 Section 6-B. Municipal officers shall be accountable, in the manner pre-
2 scribed by law, for money received by them.

NOTE.

Source: Article XIV, section 6:

> "The general assembly shall provide by law for the strict accountability of all county, township and borough officers, as well for the fees which may be collected by them, as for all public or municipal moneys which may be paid to them."

Changes in Substance: The provision is applied to the officers of all municipalities and not only to those of counties, townships and boroughs, as in the present constitution.

Changes in Style: The commission's rules of style have been followed.

Special Note to the commission by the committee on style.

This section, as adopted by the commission, was numbered article XVIII-A, section 11.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE XVIII-A, SECTION 6-C.

The committee of the whole proceeded to the consideration of section 6-C as reported by the committee on style.

The secretary read the section, notes and recommendations of the commitee on style as follows:

COUNTY OFFICERS.

1 Section 6-C. The officers of a county shall be three commissioners, three
2 auditors or a controller, a sheriff, a coroner, a prothonotary, a register of wills,
3 a recorded of deeds, a treasurer, a surveyor, a clerk of the orphans' court, a
4 clerk of the court of quarter sessions of the peace and of the court of oyer
5 and terminer and general jail delivery, a district attorney, and other officers
6 prescribed by law.
7 In a county co-extensive with a city or included therein, any constitutional
8 county office may be abolished by law and its duties and powers may be trans-
9 ferred to a city officer or officers.

NOTE.

Source: Part of article XIV, section 1:

"County officers shall consist of sheriffs, coroners, prothonotaries, registers of wills, recorders of deeds, commissioners, treasurers, surveyors, auditors, or controllers, clerks of the courts, district attorneys, and such others as may from time to time be established by law; * * *."

Changes in Substance: The last paragraph is new. In Philadelphia, or in any other county which may become co-extensive with a city or included therein, the amalgamation of certain city and county offices may be expedient and should be permitted by the constitution.

Clarifying Amendments: (1) Article XIV, section 1, uses throughout, the plural. It states that "county officers shall consist of sheriffs, coroners, registers of wills," etc. Standing by itself, this language would permit provision to be made by law for more than one sheriff, one coroner and one register of wills. It is probable, however, that this result was not contemplated by the draftsman and would not be permitted by the courts. It is apparently certain that there can be only one register of wills, because article V, section 22, provides that in counties having separate orphans' courts "the register of wills shall be clerk of such court."

(2) In article XIV, section 1, the term "clerk of courts," which is there used instead of the clerks of the two courts designated in the proposed section creates a doubt on more than one matter of importance. Are the clerks of the courts referred to the clerks of all county courts existing in 1874; or are they the clerks of all county courts which are or may hereafter be created by law; or are they the clerks of the county courts designated in the constitution? Finally, what is the exact definition of "a county court?" Is it any court in the county—as one of the district peace courts proposed by the commission? or is it only a court the boundaries of the jurisdiction of which are co-terminous with the boundaries of the county; and if so, is the municipal court in Philadelphia a county court? All these uncertainties will be avoided and the probable intent of the present constitution may be carried out by the language of the section here suggested.

Changes in Style: (1) The word "three" has been inserted before "commissioners" and before "auditors" because that is the number of each provided for by the constitution. (Article XIV, section 7, of the present constitution; article XVIII-A, section 7-A, of the revised constitution here proposed.)

(2) The provision that a sheriff or a treasurer cannot succeed himself has been transferred to section 7 of this article.

Special Note to the commission by the committee on style.

As adopted by the commission, the first paragraph of this section was numbered article XVIII-A, section 13.

The second paragraph, which relates to the right to abolish county officer in counties co-extensive with or lying wholly within a city, as adopted by the commission, was part of article XVIII-A, section 14-B. Section 14-B dealt with two distinct subjects: one, the special duties of county officers in a county lying wholly within a city, etc.; and the other, the power of abolishing county officers in such a county. We believe that this last belongs logically where we have now placed it, in the section dealing with the number and kinds of constitutional county officers.

On the question,

Will the committee adopt the section as reported?

Mr. TYSON. What does this section mean with respect to the clerks of the courts? Does it mean that there must be a separate clerk for each court?

The CHAIRMAN. There are separate clerks for the different courts today. The prothonotary is the clerk of the court of common pleas, and there is a separate clerk for the orphans' court in every district. They are separate courts, but I think that in some counties they are joined. In the county in which I live they are separate.

On the question recurring,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE XVIII-A, SECTION 7.

The committee of the whole proceeded to the consideration of section 7 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

ELECTION OF CERTAIN COUNTY OFFICERS.

1 Section 7. The county commissioners, the county auditors or controller, the
2 sheriff and the treasurer shall be chosen by the electors of the county. The
3 sheriff and the treasurer shall not be eligible for the succeeding term.

NOTE.

Source: Article XIV, section 2:

"County officers shall be elected at the municipal elections and shall hold their offices for the term of four years, beginning on the first Monday of January next after their election, and until their successors shall be duly qualified; all vacancies not otherwise provided for, shall be filled in such manner as may be provided by law." (Amendment of November 2, 1909.)

(2) Part of article XIV, section 1:

"* * * no sheriff or treasurer shall be eligible for the term next succeeding the one for which he may be elected."

Changes in Substance: The commission recommend a change of the present constitutional requirement that all county officers provided for in the constitution be elected.

The duties of the prothonotary, the register of wills, the clerks of the courts and the district attorney are such that it may in time be judged expedient that they should be appointed by the courts.

The duties of the surveyor and of the recorder of deeds are purely ministerial, so that it may be proper to direct that they shall be appointed by the county commissioners or by some other agency.

The duties of the coroner are not of such importance, in the opinion of the Commission, as to jsutify a constitutional mandate that he shall always be elected.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

Mr. FISHER. Mr. Chairman: Just one question that arises in my mind is whether if we specify the offices which are to be elected in we might not raise the inference that other offices are not to be elected. I find there is an impression of that in the minds of certain county officials. Of course, the omission means that the legislature has full powers, but if the results of our labors come before the people for approval, it might raise unnecessary opposition if we do not say "such other officers as may be directed by law," or words to that effect. I offer an amendment including "such other officers as may be directed by law."

Mr. GORDON. It would seem as though only the county commissioners and the county auditor or controller, sheriff and treasurer are to be elected by the people. There is no provision how the other shall be elected or appointed that I see, is there?

The CHAIRMAN. No, sir. My own impression about it, Judge Gordon, is this: I have gotten a great many letters about this section of the constitution, and I am not certain that it may not be the part of wisdom to retain the provisions in the present constitution in regard to the election of county officers generally, because it will certainly lead to great opposition to the constitution if these officers

are not kept elective in the country district. There is a strong feeling in the country districts that the county officers should be chosen by the people, which possibly does not exist in the large cities; but in the country it is felt to be a real public interest. What do you think about it, Mr. McCormick?

Mr. McCORMICK. I feel if something is not done to reduce the size of our ballot it will be impossible for our people intelligently to vote on county officers. The ballots are becomming larger and larger. The county anyhow is a purely administrative matter, and I personally would prefer to see the number of officers reduced that are voted upon, because in that case you can place responsibility, and if the people can centralize responsibility for bad government, it is easier to remove a few than it is to remove a great many officers. Personally I would rather see some of these officers left out and made appointive.

Mr. GORDON. This is extraordinary doctrine coming from a gentlemen who occupies a position of political prominence that my friend does. Undoubtedly the ballot is too large, and there ought to be some method of reducing it in size; but I do not think any reduction should be made by reducing the number of elective officers and increasing the executive power of appointment. What the attorney general says is so. I think the people of the counties and the people of the cities desire to elect the officers that serve them, and this in a representative democracy it is a buffer against disorder. The people will more readily submit to imbecilities and inefficiencies in those they elect than in those who are appointed by hands outside of the county; and this democracy of ours I do not think will be grateful for taking away from them the power of electing the officers in the counties who get the salaries and perform the services, that the people come in contact with every day. The whole tendency of the times is against increasing the power of appointment of executive officers, and I repeat my surprise that Mr. McCormick should want to take from the people of Dauphin county the right to elect their county officers and give that power of appointment to the govenor. I do not think that is sound statesmanship. I am very sure it is not a sound doctrine of representative democracy.

Mr. McCORMICK. I think Judge Gordon has misunderstood the position I have taken. I agree with him absolutely in regard to Dauphin county electing its own officers and conducting its own affairs, but the system that I would like to see adopted would be to elect fewer officers and put more power into the hands of our county commissioners who administer the affairs of Dauphin county, and not elect numerous clerks like registers and recorders, and possibly prothonotaries. Officers of that character could be appointed by our representatives elected by ourselves, and if the county administration is an improper one the fault is upon the men we have elected, the three county commissioners. It is easier to remove three county commissioners, or the majority of them, than it is to remove eight or ten officers and possibly remove an inefficient government. I was strongly in favor of a form of city commission government. I think our present form could be improved upon. I think there is too much foolish legislation to create a new sewer and carry through a purely business transaction. That is all wrong and absurd.

Mr. GORDON. That does not touch this question.

Mr. McCORMICK. I think that is exactly the question we are discussing here as to whether we should have fifteen or twenty county officers or whether we should elect our three county commissioners who would have power to appoint under them these various officers. I do not want an outside agent to come into Dauphin county and make appointments. That would be very wrong. I agree with Judge Gordon that we should reduce the number of elective officers for the sake of efficiency, but not to take away from the people the power of electing their own officers and governing themselves.

The CHAIRMAN. I will ask the secretary to read the section as it was adopted by the commission.

The SECRETARY. The section as adopted by the commission was in two parts; one, article XIV, section 2, and the other part, article XIV, section 1, It states merely that no sheriff or treasurer shall be eligible for a term succeeding, but the first part was adopted in this way, "county commissioners, sheriffs, treasurers, county controllers or auditors shall be elected," and then there was stricken out what had previously been adopted by the commission, the words "or other municipal officers shall be elected or appointed by an officer or agency of the municipality as may be provided by law."

Mr. FOX. Mr. Chairman: I move to amend by substituting the two sections of article XIV, section 2 and section 1, of the old constitution.

Mr. GORDON. Mr. Chairman: I second the amendment.

It was agreed to.

The SECRETARY. The secretary is in doubt as to the effect of the motion of Judge Fox. It was to substitute for the section as reported by the committee the two sections of the present constitution. The first, of course, makes a substantive change that makes all county officers elective, prothonotaries, all of them. It also repeats, by the reference to their "beginning on the first Monday of January after election" what has already been provided for somewhere else, and the secretary is in doubt as to whether the two sections should be combined in one or whether in making up the calendar for the next time this matter, which is a repetition of some former matter that has been adopted shall be left out. Am I correct that it was the purpose of the motion, if these two sections are combined, to make all county officers, elective?

Mr. FOX. Yes, you are quite correct.

The SECRETARY. Then, if I understand it correctly, I combine these two and leave out the reference to the first Monday of January, which has been provided for elsewhere.

Mr. FOX. I do not think it would do any harm.

Mr. GORDON. Do I understand the secretary to think that would make it so that the prothonotary of the court of common pleas of Philadelphia county would be elected?

The SECRETARY. Yes, it would if it were not for another clause, which states that the prothonotary of Philadelphia county shall be appointed.

Mr. GORDON. Yes; and also the prothonotary of the supreme court and the superior court, it would not affect them?

The SECRETARY. No, that only applies to county officers. It would make all the clerks of the courts and all the present elective officers elective.

ARTICLE XVIII-A, SECTION 6-B.

Mr. REED. Mr. Chairman: I move that the vote by which section 6-B of article XVIII-A was adopted be reconsidered.

Mr. STEVENS. Mr. Chairman: I second the motion.

The motion was agreed to.

Mr. REED. Mr. Chairman: Permit me to call your attention to section 6-B of article XVIII-A, which Judge Stevens criticised. That section 6-B of the old constitution provides that the general assembly should provide by law for the strict accountability of all county, township and borough officers, and now they are applying that to all municipalities, which includes cities and counties. The language has been changed so that it simply states a principle that municipal officers shall be accountable for money received by them in the manner prescribed by law, but it does not throw any burden on the general assembly to pass the necessary laws for that purpose. It seems to me the old provision changed to apply to municipalities instead of county, borough and township officers would be more effective and more binding on the legislature. I move to adopt the provisions of the present constitution.

Mr. STEVENS. I second the substitute.

On the question,

Will the committee agree to the substitute?

Mr. REED. Changing it, of course, to read "for the strict accountability of all officers of the municipality," to conform to the rest of sentence.

On the question recurring,

It was agreed to.

ARTICLE XVIII-A, SECTION 7-A.

The committee of the whole proceeded to the consideration of section 7-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

COUNTY COMMISSIONERS AND COUNTY AUDITORS.

1 Section 7-A. Three county commissioners shall be elected in each county in
2 the year 1923, one to serve for two years and two to serve for four years. Every
3 four years thereafter, two commissioners shall be elected to serve for four years.
4 In the year 1925 and every four years thereafter, one commissioner shall be
5 elected to serve for four years. An elector shall vote for one candidate for com-
6 missioner except in the year 1923, when he shall vote for one candidate to serve
7 for two years and for one candidate to serve for four years. A vacancy in the
8 office of commissioner shall be filled by the governor by the appointment of an
9 elector of the county who has voted for the commissioner whose place is to be
10 filled. In a county having auditors, they shall be elected and vacancies in the
11 office of auditor shall be filled as in the case of commissioners.

NOTE.

Source: Article XIV, section 7:

"Three county commissioners and three county auditors shall be elected in each county where such officers are chosen, in the year one thousand nine hundred and eleven and every fourth year thereafter; and in the election of said officers each qualified elector shall vote for no more than two persons, and the three persons having the highest number of votes shall be elected; any casual vacancy in the office of county commissioners or county auditor shall be filled, by the court of common pleas of the county in which such vacancy shall occur, by the appointment of an elector of the proper county who shall have voted for the commissioner or auditor whose place is to be filled." (Amendment of November 2, 1909.)

Changes in Substance: (1) Under the present constitution, three commissioners are elected every four years by a system of minority representation. Each elector votes for two candidates and the commissioners all go out of office at the same time. The commission propose to establish a system which preserves the principle of minority representation while providing that there would always be at least one commissioner holding over after each municipal election.

(2) The commission suggest that vacancies be filled by the governor instead of by the court of common pleas. This is in accordance with the principle embodied in Article V, section 21, as proposed, which forbids the exercise of such appointive power by the courts.

Changes in Style: The commission's rules of style have been followed.

Special Note to the commission by the committee on style.

As adopted by the commission, this section was numbered article XVIII-A, section 14.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE XVIII-A, SECTION 7-B.

The committee of the whole proceeded to the consideration of section 7-B as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

PHILADELPHIA PROTHONOTARY.

1 Section 7-B. The prothonotary of the county of Philadelphia shall be ap-
2 pointed by the judges of the court of common pleas of the county. He shall hold
3 office for three years but may be removed at the pleasure of the court. He
4 shall appoint assistants only with the approval of the court. The salaries of the
5 prothonotary and of his assistants shall be paid by the county.

NOTE.

Source: Article V, section 7:

"For Philadelphia there shall be one prothonotary's office, and one prothonotary for all said courts, to be appointed by the judges of said courts, and to hold office for three years, subject to removal by a majority of the said judges; the said prothonotary shall appoint such assistants as may be necessary and authorized by said courts; and he and his assistants shall receive fixed salaries, to be determined by law and paid by said county; all fees collected in said office, except such as may be by law due to the commonwealth, shall be paid by the prothonotary into the county treasury. Each court shall have its separate dockets, except the judgment docket, which shall contain the judgments and liens of all the said courts, as is or may be directed by law."

Changes in Substance: The provisions in the present constitution relating to the dockets of the several courts of common pleas is omitted because of the recommendation that there shall be a single court of common pleas in Philadelphia county. (See article V, section 5-B.)

Changes in Style: The provisions in regard to salaries and fees have been considerably shortened because of the proposed new section, article XVIII-A, section 10.

Special Note to the commission by the committee on style.

Recommendations of Change in Substance.

Alter to read:

"In the county of Philadelphia the office of prothonotary shall continue as established when this constitution becomes effective until otherwise prescribed by law."

The revised constitution proposed by the commission provides that there shall be a prothonotary in each county, as does the present constitution. (Article XVIII-A, section 6-C, as proposed; article XIV, section 1, of the present constitution.)

If the recommendations of the commission are adopted, provision may be made by law for the appointment of the prothonotaries in all counties, or classify counties in such a way as to provide for the appointment of the prothonotary in Philadelphia and the election of the prothonotaries in other counties. A special constitutional provision for the prothonotary in Phila-

delphia county, especially one going into the detail of the present constitution is, therefore, in the opinion of your committee, unnecessary. It is necessary, however, to provide for the continuance of the existing provisions until they are changed by legislative enactment.

On the question,

Will the committee adopt the section as reported?

Mr. McCORMICK. Mr. Chairman: I do not see why the people of Philadelphia should be deprived of voting for their prothonotary, if it is to be forced upon every county of the state.

The CHAIRMAN. I think in the light of what has been approved for the election of county officers, this suggestion of the committee on style is no longer of any importance.

Mr. FISHER. The only difference is this, that as originally adopted by the commission section 7-B fixed the appointment of the prothonotary by the judges of the court, but if the substitute proposed by the committee were adopted, it would leave the way open to provide for the election of the prothonotary providing the necessary legislation were hereafter enacted.

Mr. GORDON. Would that increase the length of the ballot?

Mr. FISHER. Yes, it would increase the length of the ballot.

On the question,

Will the committee adopt the recommendation of the committee on style?

It was not adopted.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE XVIII-A, SECTION 8.

The committee of the whole proceeded to the consideration of section 8 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

RESIDENCE OF COUNTY OFFICERS.

1 Section 8. An appointive county officer shall have been a citizen and resident
2 of the county for one year before his appointment, if the county has been so
3 long established, but if it has not been so long established, then within the limits
4 of the county or counties out of which it has been taken.

NOTE.

Source: Article XIV, section 3:

"No person shall be appointed to any office within any county who shall not have been a citizen and an inhabitant therein one year next before his appointment, if the county shall have been so long erected, but if it shall not have been so long erected, then within the limits of the county or counties out of which it shall have been taken."

Changes in Substance: None.

Clarifying Amendment: The present constitution probably refers to county officers only, although it is not so stated. The proposed section makes this point clear.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

Mr. FISHER. Mr. Chairman: Does not the necessity for this section fall in view of the action of the commission taken on the election of county officers? Before the amendment was adopted here, there might have been a number of appointive county officers, but under the amendment proposed by Judge Fox these appointive

officers disappear and we have only elective officers. It seems to me we might as well drop this provision. It would have no application.

The CHAIRMAN. I beg to disagree, it is in the present constitution.

Mr. REED. Does the county solicitor or the county engineer have to be elected?

The CHAIRMAN. Yes, sir.

Mr. REED. In our county the commissioners appoint the solicitor.

The CHAIRMAN. There is a special act for your county.

On the question,

Will the committee adopt the section?

It was adopted.

ARTICLE XVIII-A, SECTION 9.

The committee of the whole proceeded to the consideration of section 9 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

CERTAIN COUNTY OFFICERS TO KEEP OFFICES IN COUNTY SEAT.

1 Section 9. The prothonotary, the clerk of the orphans' court, the clerk of the
2 court of quarter sessions of the peace and of the court of oyer and terminer and
3 general jail delivery, the recorder of deeds, the register of wills, the county sur-
4 veyor, and the sheriff shall keep their offices in the county seat.

NOTE.

Source: Article XIV, section 4:

"Prothonotaries, clerks of the courts, recorders of deeds, registers of wills, county surveyors and sheriffs, shall keep their offices in the county town of the county in which they respectively shall be officers."

Changes in Substance: None.

Clarifying Amendments: The singular has been used instead of the plural, and the clerks of the courts have been more precisely designated. This conforms to the language of section 6-C of this article as proposed.

Changes in Style: "County seat" has been substituted for "county town," to conform to popular usage and to the language of section 3 of this article, as proposed.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE XVIII-A, SECTION 10.

The committee of the whole proceeded to the consideration of section 10 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

COMPENSATION OF COUNTY OFFICERS.

1 Section 10. County officers shall be paid only by salary for services performed
2 for the state government or for the county or for any other official service. Ex-
3 cept as otherwise provided in this constitution, such salaries shall be prescribed
4 by law. Fees received by county officers shall be paid into the treasury of the
5 county or into the state treasury as prescribed by law.

NOTE.

Source: Article XIV, section 5:

"The compensation of county officers shall be regulated by law, and all county officers who are or may be salaried shall pay all fees which they may be authorized to receive, into the treasury of the county or state, as may

be directed by law. In counties containing over one hundred and fifty thousand inhabitants all county officers shall be paid by salary, and the salary of any such officer and his clerks, heretofore paid by fees, shall not exceed the aggregate amount of fees earned during his term and collected by or for him."

Changes in Substance: (1) Under the present constitution, officers in counties with a population of more than 150,000 must be paid by salary. The proposed section extends this principle to the officers of all counties.

(2) The present constitution does not prevent a county officer from receiving, in addition to his salary, a commission for services to the state government, such as the collection of state taxes. (Phila. v. Martin, 125 Pa. 583; Phila. v. McMichael, 208 Pa. 297.) The proposed section forbids the payment of such commissions.

(3) Under the present constitution, the compensation of county officers can be fixed only by statute. In section 14-B of this article as proopsed, an exception to this rule is made in the case of a county co-extensive with a city or included therein. In the section here proposed, we have covered this exception in section 14-B by the words: "except as otherwise provided in this constitution."

(4) The final provision of article XIV, section 5, of the present constitution, with respect to the amounts of the salaries of the officers of counties with more than 150,000 in population, is omitted as obsolete.

Changes in Style: The section has been entirely rewritten and the Commission's rules of style followed.

Special Note to the commission by the committee on style.

The commission will note that the committee has inserted, as part of the section which relates to the amount of the salaries being prescribed by law, the proviso: "except as otherwise provided in this constitution." The reason for the exception is, as stated in the principal note, to prevent a conflict with article XVIII-A, section 14-B.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE VIII-A, SECTION 14-B.

The committee of the whole proceeded to the consideration of section 14-B as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

SALARIES AND EXPENSES OF COUNTY OFFICERS IN A COUNTY CO-EXTENSIVE WITH A CITY.

Section 14-B. In a county co-extensive with a city or included therein the the state or county officers whose salaries or the expenses of whose offices or courts shall be paid in whole or in part by the city, other than judges of the court of common pleas and of the orphans' court, shall at such times as may be required in the case of city officers submit to the chief executive officer of the city estimates of their needs. The city shall control the amount to be expended on such salaries and expenses, except that the salaries of county officers and of judges may be prescribed by law.

The judges of the court of common pleas and of the orphans' court shall likewise submit to the chief executive officer of the city estimates of so much of the expenses of their courts as shall be payable by the city.

NOTE.

Source: This is entirely new matter.

The purpose of the proposed section is to control what is known as the "mandamus evil" in Philadelphia in so far as it arises from the salaries and expenses of county officers. In the present constitution there is no prohibition against these mandamuses. It follows that the Municipal Court of Philadelphia, for example, can compel payment by the city of the salaries of its employes and of the expenses of the court to any extent. Although the city council must raise the money to pay the bills, it has no control over the amounts of the bills.

The commission therefore recommend the adoption of the proposed section. With certain exceptions it places county officers on the same basis as city officers in respect to appropriations from the city treasury. The state government may still prescribe the salaries of county officers and judges. The court of common pleas and the orphans court must submit estimates of the expenses of their offices and are not deprived of the power of mandamus.

Special Note to the commission by the committee on style.

As adopted by the commission this section read as follows:

"In any county whose boundaries coincide with or lie wholly within the boundaries of any city, all county officers and judges, other than the judges of

common pleas and orphans' courts, and all state or county officers whose salaries or expenses are payable, in whole or in part, out of funds receivable by any city or county officer shall submit to the chief executive of the city, in the manner and at the time required of city officers, estimates of the needs of their respective offices and courts. The city council or other body vested by law with the power of appropriation shall have the same control over appropriations for the support of such officers and courts as it has over appropriations for the support of city officers, except that the general assembly may fix the salaries of such officers and judges.

In any such county any or all county offices may be abolished by law and the functions and powers pertaining to any such office may be transferred to any officer or officers of such city."

The members of the commission will note that

(1) The statement that all county offices may be abolished is omitted. It has been transferred to article XVIII-A, section 6-C.

(2) We have included state officers as well as county officers whose salaries or the expenses of whose offices are paid in whole or in part by the city, understanding that the commission desire to require all officers whose salaries or the expenses of whose offices are paid by the city to submit their estimates to the chief executive officer of the city.

(3) The expression "officers and judges," is omitted because, as we have employed the word "officer," unless expressly limited to a particular class of officers, it includes judicial officers, executive officers and the officers of any law or ordinance-making body.

Recommendation of Change in Substance.

(1) Strike out, on line 1, the words "In a county co-extensive with a city or included therein the."

Insert as a preliminary paragraph the following:

"In a county co-extensive with a city or included therein, the county treasury and the city treasury shall be united in a single city treasury. The funds and obligations of the county shall be those of the city."

We believe that the adoption of this amendment is essential to fully carry out the intent of the commission to permit the consolidation of the city and county government where the county is co-extensive with a city or included therein.

(2) Strike out, on lines 3 and 4 "other than the judges of the court of common pleas and of the orphans' court."

Strike out, on line 7, after "such" "salaries and."

Strike out after "expenses," on line 7, and insert: "The salaries of county officers may be and of judges shall be prescribed by law."

The effect of the adoption of these amendments will be to place under the control of the city the amount to be expended by county officers, and by judges of all the common pleas courts, the municipal court and any other court whose expenses are paid by the city. The salaries of all judges must, by the provisions of article V, section 7, as proposed (see also article V, section 7, of the present constitution) be paid by the state government. The salaries of county officers may be, as under the present constitution, fixed by law and paid by the city.

Insert in line 8 after "law" "and the city shall control the amount to be expended on such expenses other than of the court of common pleas and of the orphans' court.

The effect of the adoption of these amendments will be to require the judges of the court of common pleas and of the orphans' courts to submit estimates of the expenses of their courts to the chief executive of the city. There is apparently no reason why they should not submit such estimates, which are necessary for the chief executive officer of the city to have if he is to submit to councils a complete budget. As the amendments are worded, councils cannot hamper the administration of justice by refusing to appropriate sufficient money to meet the necessary expenses of these courts.

On the question,

Will the committee adopt the section as reported?

Mr. FOX. Mr. Chairman: At the request of Mr. English, who was obliged to leave, I desire to submit the following amendment: Strike out lines six to eight, and substitute therefor, "The city shall control the amount to be expended on such salaries and expense, other than of the court of common pleas and of the orphans' court. The salaries of county officers may be, and of judges shall be, prescribed by law."

Mr. McCORMICK. Mr. Chairman: I second the amendment.

On the question,

Will the committee agree to the amendment?

Mr. REED. Then what becomes of the fo lowing section, that the judges submit estimates of their expenditures? If I am talking about the same section that you are.

Mr. GORDON. I do not know the extensive purpose of this amendment. I presume one of the purposes was to control the expenditures of certain courts, probably. Am I right about that? For instance, to be specific, the municipal court. I am informed that the notes in explanation say so.

The SECRETARY. It may make it clear, sir, if I state that, as drafted here, its effect is that it puts under the city control the expenses of all the courts, not the salaries of the judges, but the other expenses of the courts of common pleas and the orphans" courts, but leaves under the control of the city, as in the section as drafted, the expenses of such courts as the municipial court.

Mr. GORDON. Are the expenses of the orphans' court and the courts of common pleas at the present time under the control of the state or county?

The CHAIRMAN. I think not.

Mr. GORDON. You think not?

The CHAIRMAN. No, sir; they are under the control of the county.

Mr. GORDON. The expenses of the common pleas and orphans' court, are they now under the control of the county?

The CHAIRMAN. Yes, sir; under the control of the county commissioners.

Mr. GORDON. Except for their salaries?

The CHAIRMAN. Yes, sir.

On the question recurring.

Wi l the committee agree to the amendment?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

The CHAIRMAN. There is another amendment suggested by the committee on style, or several amendments. The first amendment is to strike out on line 1 the words "in a county co-extensive with a city or included therein the," and insert as a preliminary paragraph the following, "In a county co-extensive with a city or included therein, the county treasurer and the city treasurer shall be united in a single city treasurer. The funds and obligations of the county sha'l be those of the city."

On the question,

Will the committee agree to the amendment?

It was agreed to.

The CHAIRMAN. The next amendment is to strike out on lines 3 and 4 the words "other than the judges of the courts of common pleas and of the orphans' court," and strike out on line 7 after the word "such" the words "salaries and" strike out all after "expenses" on line 7, and insert "the salaries of county officers may be and of judges shall be prescribed by law."

On the question,

Will the committee agree to the amendments?

They were agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVIII-A, SECTION 22.

The committee of the whole proceeded to the consideration of section 22 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

AMOUNT TO WHICH MUNICIPALITY MAY INCUR DEBT.

Section 22. A municipality may incur debt by borrowing money as prescribed by law or by an agency created by law with state-wide jurisdiction, if its aggregate debt for borrowed money would not then exceed the sum of:

(a) Ten per centum of the assessed value of real estate taxable by or for the benefit of the municipality.

(b) An amount equal to that capital sum which, at the legal rate of interest and at such amortization charges as shall be prescribed by law would yield an amount equal to the net revenue derived by the municipality during the last preceding fiscal year from its public improvements.

(c) The amount of debt secured by liens on public improvements and imposing no obligation on the municipality, if the net revenue derived from such improvements has not been taken into account under paragraph (b).

(d) So much of any debt incurred within five years to acquire public improvements as an agency created by law with state-wide jurisdiction shall consider likely to be allowable under paragraph (b) within six years after its incurrence, if the net revenue derived from such improvements has not been taken into account under paragraph (b), and if such debt has not been taken into account under paragraph (c).

(e) The par value of the evidences of debt of the municipality, owned by it, and pledged toward the payment of the principal of its debt.

(f) The amount of cash and the market value of investments owned by the municipality and the amount of the collectible debts due or to fall due owned by the municipality, in so far as such assets are pledged toward the payment of the principal of its debt.

(g) Eighty per centum of the amount which it is estimated as prescribed by law that the municipality will receive within five years from assessments against property benefited by public improvements, if such amount is pledged toward the payment of the principal of its debt and if it has not been taken into account under paragraph (f).

A municipality shall not within any three hundred and sixty-five successive days incur debt by borrowing money in excess of one-quarter of one per centum of the assessed value of real property taxable by it except with the approval of a majority of the electors voting on the question.

The term "incur debt," as used in this section, shall include an incurrence of new indebtedness, an extension of the maturity of a debt, a deferment of the payment of a debt, a change in the form of a debt, and an assumption of a debt.

A debt shall be deemed to be incurred at the time the obligation to pay is entered into or the contract to extend, defer, change or assume an existing debt is made.

NOTE.

Source: (1) The first paragraph of article IX, section 8:

"The debt of any county, city, borough, township, school district, or other municipality or incorporated district, except as provided herein, and in section fifteen of this article shall never exceed seven (7) per centum upon the assessed value of the taxable property therein, but the debt of the city of Philadelphia may be increased in such amount that the total city debt shall not exceed ten (10) per centum upon the assessed value of the taxable property therein, nor shall any such municipality or district incur any new debt, or increase its indebtedness to an amount exceeding two (2) per centum upon such assessed valuation of property without the consent of the electors thereof at a public election in such manner as shall be provided by law. In ascertaining the borrowing capacity of the said city of Philadelphia, at any time, there shall be excluded from the calculation and deducted from such debt so much of the debt of said city as shall have been incurred, and the proceeds thereof invested, in any public improvements of any character which shall be yielding to the said city an annual current net revenue. The amount of such deduction shall be ascertained by capitalizing the annual

net revenue from such improvement during the year immediately preceding the time of such ascertainment; and such capitalization shall be estimated by ascertaining the principal amount which would yield such annual, current net revenue, at the average rate of interest, and sinking fund charges payable upon the indebtedness incurred by said city for such purposes, up to the time of such ascertainment. The method of determining such amount, so to be deducted, may be prescribed by the general assembly. * * *" (Amendment of November 4, 1918.)

(2) Article IX, section 15:

"No obligations which have been heretofore issued, or which may hereafter be issued, by any county or municipality other than Philadelphia, to provide for the construction or acquisition of water-works, subways, underground railways or street railways, or the appurtenances thereof, shall be considered as a debt of a municipality, within the meaning of section eight of article nine of the constitution of Pennsylvania or of this amendment, if the net revenue derived from said property for a period of five years, either before or after the acquisition thereof, or where the same is constructed by the county or municipality, after the completion thereof, shall have sufficient to pay interest and sinking fund charges during said period upon said obligations, or if the said obligations shall be secured by liens upon the respective properties and shall impose no municipal liability. * * * Any of the said municipalities or counties may incur indebtedness in excess of seven per centum, and not exceeding ten per centum, of the assessed valuation of the taxable property therein, if said increase of indebtedness shall have been assented to by three-fifths of the electors voting at a public election, in such manner as shall be provided by law." (Amendment of November 4, 1913.)

Preliminary Explanation. The limits, if any, which should be placed on the borrowing power of municipalities is a subject of great difficulty and perplexity. As originally promulgated, the constitution limited the debt of all municipalities to seven per centum upon the assessed value of its taxable property. Successive amendments have been passed to meet, as they arose, now a condition in Philadelphia, again a condition in Pittsburgh or in another municipality, until at present the constitution presents two sets of provsions; one relating to Philadelphia and the other to the rest of the state, neither of which can be said to represent the result of scientific study of the subject. For the existing complicated system, the result of the many amendments of recent years, the Commission has here attempted to present a single system applicable to all the municipalities of the state, which we believe will be found easy to understand and apply and which will, on the one hand give to municipalities sufficient borrowing power to meet the modern requirements for public works and, on the other, protect the people of the Commonwealth from the unfortunate results of reckless municipal financing.

Changes in Substance: The first part of the introductory paragraph proposed prescribes:

"A municipality may incur debt by borrowing money as prescribed by law or by an agency created by law with state-wide jurisdiction * * *"

At present the general assembly may by law prescribe limitations on the borrowing power of a municipality in addition to those prescribed in the constitution. The language herein suggested makes it clear that the general assembly will have a right to vest in an agency created by law power to supervise and control incurrences of debt by all municipalities or municipalities of a given class. It is probable that the general assembly could under the present constitution lawfully create several of such agencies each having jurisdiction only over the municipalities situated in a district. The substantive change introduced by the wording of the paragraph herein suggested is that such agency shall have state-wide jurisdiction over all municipalities in the state or over all municipalities of a given class in the state.

The last part of the introductory paragraph to the section as proposed prescribes:

"A municipality may incur * * * if its aggregate debt would not then exceed the sum of * * *"

In the present constitution the method of setting forth the provisions of the section is to state that the borrowing capacity shall not exceed ten per centum of the assessed value of property, and then to declare that certain debts, as debts incurred for public works, under the conditions set forth are not to be regarded as debts for the purpose of the calculation. The awkwardness of this method of statement has increased the confusion and uncertainty which has always surrounded the whole question of the borrowing power of municipalities under existing constitutional provisions.

The principle underlying the provisions of the present constitution and of the section herein suggested is that a municipality may impose, in fact, on its taxpayers, the obligation to pay interest and amortization charges on a sum not exceeding ten per centum of the assessed value of the taxable value of the property (or as herein prescribed, the real property) within the municipality. The actual debt may exceed this sum by any amount provided there are assured revenues of the municipality from which the excess can be paid. The form of statement herein suggested corresponds to the

facts. It is declared that a municipality may incur debt if its aggregate debt would not then exceed the sum of the several clauses set forth, of which ten per centum of the assessed value of real property in the municipality is one.

Clause (a) as proposed provides:

"Ten per centum of the assessed value of real estate taxable by or for the benefit of the municipality."

At present the limit on the amount of indebtedness that may be incurred by a municipality is ten per centum upon the assessed value of the taxable property therein. In municipalities other than Philadelphia, any increase above seven per centum of the assessed value of the taxable property must be assented to by three-fifths of the electors voting on the question. Under clause (a) as proposed, the assent of a majority of the electors voting on the question is all that is required. The amount which may be borrowed is limited to ten per centum upon the assessed value of the real estate taxable by or for the benefit of the municipality. Under the existing constitutional provisions, the assessed value of all taxable property is used as the basis of the calculation. If it is desired to increase the debt limit, all that is necessary is to place an insignificant tax on additional kinds of property within the municipality. Thus, under the act of June 17, 1913 (P. L. 507), the previously levied four-mill tax, instead of going partly into the state treasury, was directed to be paid entirely into the county treasuries, and in the case of Philadelphia, into the combined city and county treasuries. By this expedient, the amount of the debt limit of the city of Philadelphia was increased from $115,028,896.71 to $154,899,899.39, or by $39,870,992.68.

It is apparent therefore that if the constitutional limit is in terms of taxable property, a municipality's debt limit could be indefinitely increased by making bank deposits, invested capital (in commerce, industry, manufacturing, transportation, insurance, banking, etc.), and a host of other things subjects of municipal taxation. For example by the simple expedient of making bank deposits subject to municipal taxation, and possibly only in cities of the first class, Philadelphia's net debt limit would immediately be increased by about $120,000,000. This would be so even though the tax were at so low a rate as one one-hundredth of one per cent., and even though the cost of collecting the tax exceeded the collections.

The Commission fully realize the necessity under modern conditions, of permitting a wide latitude in the borrowing power of municipalities, especially of the larger cities. But if the principle of controlling by constitutional limitations the borrowing power of municipalities, is sound, and we believe it is, then we submit that the limitations should be real and not imaginary. To leave the door open so as to admit of any one or more of these extensions of the debt limit is to admit that the matter is properly a subject for legislative control and not a proper subject for constitutional control.

The Commission feel that the provisions of clauses (b) to (g) inclusive, as proposed, provide a very liberal substitute for the present right to include ten per centum of the assessed value of the taxable property within the municipality other than real estate and the present lawful deductions from the gross debt.

The words "or for the benefit of" are inserted in clause (a) so as to take care of any municipality for which the state government, or some other authority except the municipality itself, actually levied the tax. The four mill tax in Pennsylvania on certain "money at interest" and "vehicles to hire," was levied by the legislature, and not by any of the municipalities benefiting therefrom. As it is quite possible that at some future times taxes for municipal purposes, on all or a portion of the property included in the basis for determining municipal debt limits, might be levied by some authority other than the municipalities themselves, it is desirable that the constitution clearly indicate that the property on which taxes are so levied is to be used as a basis for calculating the debt limits of the municipalities.

Clause (b) as proposed provides:

"An amount equal to that capital sum which, at the legal rate of interest and at such amortization charges as shall be prescribed by law would yield an amount equal to the net revenue derived by the municipality during the last preceding fiscal year from its public improvements."

Under the present constitution in ascertaining the amount of existing indebtedness for the purpose of calculating the borrowing power at any time, it is permissible to disregard under certain conditions any indebtedness incurred in the past for public improvements which are yielding an annual current net revenue. The conditions under which such indebtedness can be disregarded in the calculation are not the same for the city of Philadelphia as for other municipalities.

In municipalities other than Philadelphia, in order to disregard a prior indebtedness in calculating the "existing indebtedness," the prior indebtedness must have been incurred "for the construction or acquisition of waterworks, subways, underground railways or street railways, or the appurtenances thereof;" while in Philadelphia the prior indebtedness may have been incurred for "any public improvement."

Again, in municipalities other than Philadelphia, such indebtedness must have been incurred for the acquisition of properties which for a period of five years, either before or after their acquisition, have been yielding a net revenue sufficient to pay the interest and sinking fund charges on such indebtedness; while in Philadelphia the improvement for which said indebtedness is incurred must have been yielding an annual current net revenue to the city for the year immediately preceding the time the calculation is made.

Furthermore, in any municipality, except Philadelphia, no portion of the indebtedness incurred for the acquisition of the properties can be deducted from the present indebtedness of the municipality for the purpose of calculating the existing borrowing capacity unless the annual net revenue has been sufficient to pay all the interest and sinking fund charges on the indebtedness incurred for the improvement; while in Philadelphia, if the operation of the improvement has during the preceding year yielded to the city any current net revenue, there may be deducted from the total indebtedness of the city, for the purpose of calculating its borrowing capacity, a capital sum ascertained by determining the amount which will yield at the average rate of interest and sinking fund charges payable by the city, the annual current revenue which the city is receiving from the operation of the improvement.

Clause (b) as proposed is a substitute for these confused and complicated provisions. The principle underlying the clause is that where there is a public improvement which is actually yielding a net revenue, then that capital sum which would yield an equal revenue at the current rate of interest and amortization charges can safely be added to the assessed value of the taxable real estate in order to ascertain the amount of the debt limit of the municipality. The kind of public improvement from which the revenue is derived should make no difference, neither should it be stipulated that the public improvement which is yielding a net revenue should have been acquired by the expenditure of borrowed money. Therefore, in drafting clause (b), these requirements found in the existing constitution have been omitted.

Clause (c) as proposed provides:

"The amount of debt secured by liens on public improvements and imposing no obligation on the municipality, if the net revenue derived from such improvements has not been taken into account under paragraph (b)."

This clause expresses the principle that there should not be any limitation on the amount of those debts of municipalities which are secured by liens on public improvements and impose no liability on the municipality, and that the existence of such debts should not limit in any manner the borrowing capacity of a municipality. In the present constitution this principle is recognized but is applied only to municipalities other than Philadelphia (article IX, section 15, of the present constitution). In clause (c) as worded, the principle is extended to Philadelphia by being made applicable to all municipalities.

Clause (d) as herein proposed provides:

"So much of any debt incurred within five years to acquire public improvements as an agency created by law with state-wide jurisdiction shall consider likely to be allowable under paragraph (b) within six years after its incurrence, if the net revenue derived from such improvements has not been taken into account under paragraph (b), and if such debt has not been taken into account under paragraph (c)."

In the present constitution, under article IX, section 15, any municipality other than Philadelphia, in computing its debt for the purpose of ascertaining its remaining borrowing capacity, can deduct from its indebtedness any debt incurred to acquire a public improvement which, for a period of five years before or after it has been acquired by the municipality has yielded a net revenue sufficient to pay the interest and sinking fund charges on such debt.

Under the clause as proposed, the general principle underliyng this provision is recognized but the method of treatment is wholly different and involves the following:

(1) It makes a uniform rule for all municipalities. (Philadelphia is not excepted.)

(2) It applies to revenue derived from any public improvement and not merely to revenue derived from waterworks and transportation facilities.

(3) The public improvement need not have yielded, during a period of five years preceding the calculation, a net revenue sufficient to pay the legal rate of interest and sinking fund charges on money borrowed for its acquisition, but, on the other hand, the public improvement must be, in the opinion of a state-wide agency having jurisdiction, likely to yield a revenue within six years from the incurrence of the debt contracted to acquire it. Thus, under the provisions of clause (b), as proposed, if a municipality desires to acquire a public utility such as a trolley system, or build waterworks, without encroaching on its borrowing capacity for other purposes, it could borrow for the purposes of the acquisition no more than a sum which would yield, at the legal rate of interest and amortization charges, an annual net income equal to what, in the opinion of a state-wide agency, would be the current annual net revenue within six years.

Clause (e) as proposed provides:

"The par value of the evidences of debt of the municipality owned by it and pledged toward the payment of the principal of its debt."

This clause expresses the principle that where a municipality owns some of its own debt, that municipality has, to all intents and purposes, paid that debt. In such a case, the asset and the liability merge or offset each other and in all computations of debt limits the securities owned should offset or support the debt to the exact amount at which such securities are counted as a liability.

The present constitution makes no express reference to this subject, but the supreme court has decided that municipal bonds held in the sinking fund are no longer debts of the municipality for the purpose of calculating its borrowing capacity under the provisions of the constitution. (Brooke v. Philadelphia, 162 Pa. 123, 1894; Bruce v. Pittsburgh, 166 Pa. 152, 1895.)

Clause (f) as herein proposed provides:

"The amount of cash and the market value of investments owned by the municipality and the amount of the collectible debts due or to fall due owned by the municipality, in so far as such assets are pledged toward the payment of the principal of its debt."

The subject of this clause is not referred to in the present constitution. As herein proposed, it is another application of the principle that the borrowing power of a municipality may be increased by the amount of its assets available and pledged to meet existing indebtedness.

In Brooke v. Philadelphia, 162 Pa. 123, 1894, the supreme court held that securities in the sinking fund, other than the bonds of the municipality, are merely an asset of the city and do not operate to reduce the debt or increase the borrowing capacity of the municipality. The clause as proposed would increase the borrowing capacity of the municipality by the market value of such securities.

Clause (g) as proposed provides:

"Eighty per centum of the amount which it is estimated as prescribed by law that the municipality will receive within five years from assessments against property benefited by public improvements, if such amount is pledged toward the payment of the pirncipal of its debt and if it has not been taken into account under paragraph (f)."

This is entirely new matter. It is based on the same principle as clause (f). Under article XVIII-A, section 23-E as herein proposed, laws may be enacted authorizing assessments against properties which are especially and particularly benefited by public improvements. As explained in the note appended to that section, its object is to enable large public improvements to be made by assessing a part of the cost on the property specially benefited thereby. Where, in other jurisdictions, this system of carrying on public improvements is adopted, it has been found in practice to be desirable to make the benefits assessed payable over a series of years. Therefore, the suggested provision in the section here proposed that the assessments to be paid within five years is made the basis of the calculation. As the municipality under the proposed wording of the clause is the judge of the amount of the assessments which will be received, we have inserted, as a precaution against over-estimates, the provision that only eighty per centum of the amount which it is estimated that the municipality will receive is to be taken into consideration.

The second paragraph in the section as proposed provides:

"A municipality shall not within any three hundred and sixty-five successive days incur debt by borrowing money in excess of one-quarter of one per centum of the assessed value of real property taxable by it except with the approval of a majority of the electors voting on the question."

The corresponding provision in article IX, section 8, is that no municipality shall incur "any new debt or increase its indebtedness to an amount exceeding two per centum upon such assessed valuation of property without the consent of the electors thereof at a public election in such manner as shall be provided by law." As worded, the provision quoted is ambiguous: By "incur any new debt or increase its indebtedness," it might be meant that the two per cent. shall not be incurred in one loan or that the two per cent. shall not be incurred within one year or some other period; but in practice it has been held to mean that there shall not be outstanding at any one time more than two per cent. of the indebtedness not assented to by the electorate.

In the section as proposed, an entirely new principle is introduced: namely, that in any three hundred and sixty-five days the municipality shall have a right to increase its indebtedness for money borrowed to a quarter of one per centum of the assessed value of its real estate without the assent of the electors. The commission submit that the objects of permitting the ordinance-making body of a municipality to borrow money without the assent of the electorate are to enable the municipality to meet sudden emergencies and to provide for improvements which do not require large outlays. Therefore, the amount which may be borrowed should not depend, as under the provisions of the present constitution, on the amount which has been borrowed

without the assent of the electorate in prior years. Each year the municipal government, if the debt of the municipality does not exceed the constitutional limit, should have a right to incur, without the assent of the electorate, a debt sufficient to meet emergencies and improvements not involving a relatively large outlay.

The third paragraph of the section as proposed provides:

"The term 'incur debt,' as used in this section, shall include an incurrence of new indebtedness, an extension of the maturity of a debt, a deferment of the payment of a debt, a change in the form of a debt, and an assumption of a debt."

To avoid the uncertainty and the resulting litigation which results from the uncertainty of exactly what constitute an incurrence of a new debt or increase in indebtedness under the present constitution, it is necessary that the words "incur debt" as used in this proposed section shall be defined. we have intentionally made the definition as inclusive as possible.

Under the wording of the section as proposed, if a municipality desired to refund its debt, the issuing of the new obligations in place of the old would not increase the debt of the municipality, but the act would be an incurrence of a debt and if the amount involved was greater than one-quarter of one per centum of the assessed value of the real estate, the assent of the electorate would have to be obtained. This result, it is submitted, is correct in principle. Questions pertaining to the refunding of a loan are often as important as those involved in the original issue of the loan.

The final paragraph of the section as proposed provides:

"A debt shall be deemed to be incurred at the time the obligation to pay is entered into or the contract to extend, defer, change or assume an existing debt is made."

This paragraph has been incorporated in the section to avoid continuance of the uncertainty and confusion which exists today in practice as between different municipalities in respect to the time when the debt is incurred. In drafting this paragraph, it would be possible to make the time of incurring the debt (a) when the ordinance placing the question before the electorate is adopted, or (b) when the electorate ratify the increase, or (c) when the ordinance is adopted directing the proper officers to enter into the indebtedness on behalf of the municipality, or (d) when the obligation to pay is actually incurred. Under the provisions of the paragraph suggested, the last of these possibilities has been adopted. Under its provisions, if the electorate authorize two loans at successive times which in the aggregate exceed the limit of debt-incurring power at the time, the one last authorized, if by itself it does not exceed the limit, may be negotiated, if no action to incur indebtedness has been entered into under the first loan.

The following analyses give some particulars of the effect of the proposed provisions on the larger municipalities:

EFFECT OF THE ADOPTION OF THE SECTION ON THE BORROWING CAPACITY OF CERTAIN MUNICIPALITIES.

1. Effect on Larger Cities and Borough of Proposed Provision Permitting the Annual Borrowing by Ordinance One-quarter of One Per Cent. of Value of Real Estate.

Name of city or borough.	Assessed value of taxable real estate for 1920.	One-quarter of one per cent. of the assessed value.
Allentown,	$69,691,960	$174,229 90
Altoona,	29,611,700	74,029 25
Bethlehem,	56,500,000	141,250 00
Chester,	58,000,000	145,000 00
Easton,	31,268,055	78,170 14
Erie,	91,840,960	229,602 40
Harrisburg,	63,085,975	157,714 94
Hazleton,	20,029,253	50,073 13
Johnstown,	63,683,200	159,208 00
Lancaster,	30,323,910	75,809 70
McKeesport,	33,525,000	83,812 50
New Castle,	27,317,000	68,292 50
Norristown,	15,329,440	38,323 60
Philadelphia,	1,941,467,934	4,853,669 83
Pittsburgh,	*813,000,000	*2,032,500 00
Reading,	68,695,788	171,739 47
Scranton,	107,996,635	269,991 59
Wilkes-Barre,	79,500,000	198,750 00
Williamsport,	21,876,710	54,691 77
York,	32,935,447	82,338 62

*The assessed value given for Pittsburgh has been computed from data contained in official documents, and is inserted here in the absence of the exact figures.

2. Effect on Larger Counties of Proposed Provision Permitting the Annual Borrowing by Ordinance of One-quarter of One Per Cent. of Value of Real Estate.

Name of county.	Assessed value of taxable real estate for 1919 or 1920.	One-quarter of one per cent. of the assessed value.
Allegheny,	$1,234,700,040	$3,086,750 10
Beaver,	56,434,657	141,086 64
Berks,	110,189,883	275,474 71
Blair,	45,530,556	113,826 39
Cambria,	136,378,780	340,946 95
Chester,	77,294,265	193,235 66
Clearfield,	19,278,343	48,195 86
Dauphin,	93,676,299	234,190 75
Delaware,	123,381,101	308,452 75
Erie,	86,400,228	216,000 57
Fayette,	100,005,932	250,014 83
Lackawanna,	188,706,699	471,766 75
Lancaster,	108,057,115	270,142 78
Lehigh,	90,245,444	225,613 61
Luzerne,	334,502,755	836,256 89
Montgomery,	140,434,935	351,087 34
Northampton,	81,081,422	202,703 55
Northumberland,	143,171,967	357,929 92
Philadelphia,	1,941,467,934	4,853,669 83
Schuylkill,	95,002,449	237,506 12
Washington,	123,211,217	308,028 04
Westmoreland,	148,686,080	371,715 20
York,	59,363,189	148,407 97

3. Effect of Proposed Provisions on Borrowing Capacity of Philadelphia.

Clause	*Proposed Section.*	*Analogous Provisions of Present Constitution.*
(a)	$194,146,793.40	$263,500,796.08
(b)	69,439,039.75*	32,329,488.00 (See petition of City of Philadelphia, C. P. 5, June 1, 1919, No. 2549.)
(c)	To increase in the debt-incurring capacity of the city under this clause will depend on the amount of the debt incurred by the city secured by liens on public improvements and imposing no obligations on the city.	None.
(d)	It is impossible to estimate the amount by which the borrowing capacity is increased by this clause, as its provisions operate only if the city decides to acquire public improvements from which a net revenue will be acquired within six years.	None.
(e)	Same as at present.	Same as proposed.
(f)	Same as at present, plus market value of investments owned by the city, amounting to upwards of $2,000,000.	Same as proposed, less market value of investments owned by the city.
(g)	A large amount of which no estimate can be made in advance, because it would depend on the nature of public improvements undertaken and on the amount of property specially and particularly benefited thereby.	None.

*Note: The estimate of the amount of debt under the proposed clause is as follows:

Current net revenue from water works, (See case above cited.)	$2,135,841 59
Current net revenue from port facilities,	238,649 67
Current net revenue from United Gas Improvement Co., (City Controller's Report for 1919.)	3,180,631 92
Total to be capitalized at 6% interest and 2% amortization...	$5,555,123 18

The commission believe that the net result of the proposed provisions would be to increase the borrowing capacity of Philadelphia. The loss in borrowing capacity through the adoption of clause (a) should be more than counterbalanced by the gains through the adoption of the other clauses, especially (g). Indeed, the wording of clause (g) makes it possible for the city to meet the expense of any public work which specially and particularly benefits property in its vicinity.

Changes in Style: The commission's rules of style have been followed.

Special Note to the commission by the committee on style.

To clarify the uncertainties which we discovered in this section as adopted by the commission, we have added the two final paragraphs here reported. The reasons for their adoption are set forth in the notes appended to the section.

We have changed this section so as to make it clear that (1) under (c) the par value of the bonds shall be the basis of calculation; (2) under (f) the market value of the investments and the collectible amount of the debts due the municipality shall be the basis of investment; (3) that the time during which the aggregate incurrences or extensions of indebtedness shall not exceed one-quarter of one per centum of the assessed value of the taxable property in the municipality shall be "within 365 days," and not within the calendar or the fiscal year; (4) by using, in the last paragraph, the word "incurrences" instead of "increases," we have made it certain that the fact that municipality may have, during the same period, paid off some of its prior indebtedness shall not be taken into consideration.

On the question,

Will the committee adopt the section as reported?

The CHAIRMAN. The explanation to this section is lengthy. The suggestion of the chair is that there might be an explanation of the essential details by the secretary, who drew the amendment that has just been adopted by the people in Philadelphia. He can explain how this works out.

The SECRETARY. Section 22, it should be stated, is almost in the exact language heretofore adopted by the commission at the session on May 11th. There are a few minor changes, which I shall refer to in a moment, set forth in the notes of the committee on style to the commission, which the committee put in to clarify certain doubts as to the exact meaning which arose in their minds on a study of the section. The section as a whole is an attempt, as the secretary understands it, to combine and make one provision in regard to the limitations in the constitution on the incurrence of debt for all municipalities instead of the rather confused and separate provisions for Philadelphia, on one hand, and other municipalities on the other, in the present constitution. The first clause sets forth, clause (a), that the amount of money to be borowed shall be "ten per centum of the assessed value of real estate taxable by or for the benefit of the municipality." All the other clauses relate to the ability to borow by the municipality on a capitalized annual net revenue from any source which the municipality has, so that as the section stands as a whole it embodies this principle: that a municipality can have outstanding at one time an amount of debt which is equal to ten percentum of the assessed value of the real estate in the municipality, plus the amount of that capital sum which represents the total net revenue of the municipality other than its revenue from taxation. The different classes of assets, the revenue from which can be capitalized, are set forth in clauses (b), (c), (d), (e), (f) and (g).

(b) is an amount equal to that capital sum which at the legal rate of interest and at such amortization which, as prescribed by law will yield an amount equal to the net revenue derived by the municipality during the last preceding fiscal year from its public improvements.

(c) The amount of debt secured by lines on public improvements and imposing no obligation on a municipality if the net revenue derived from such improvement has not been taken into account.

Paragraph (d) is substantially what has been adopted by the people as far as Philadelphia is concerned at the last election. It permits a municipality to borrow when it purchases a utility an amount of money represented by the capitalization of the revenue which in the opinion of a state-wide agency will result from that purchase at the end of six years.

Paragraph (e) the par value of the evidence of debt of the municipality owned by it and pledged toward the payment of the principle of its debt, or the amount, for instance, in the sinking fund; the amount of the market value of investments owned by the municipality, and the amount of the collectible debts due or to fall due.

Paragraph (g) is inserted as a complement to the sections which have been adopted by the commission relating to special assessment for special improvement, and declares that eighty per cent. of the amount which is estimated as prescribed by law that the municipality

will receive within five years from assessment against property benefited by public improvement can be added to the borrowing capacity of the city.

That practically covers all the expected revenues in the municipality.

Now, the two principal changes in this section from the present constitution, outside of the uniform adoption of the principle that the municipality may borrow on the capitalized value of its net revenue from any of its assets whatever those assets may be in addition to the ten per cent., are the changes as to what shall go before the people for ratification when additional money is desired to be borrowed. Under the present constitution a municipality can not have outstanding at any one time a debt which has not been especially sanctioned by the vote of the electors of a municipality in excess of two per cent. In this clause as adopted by the commission it is provided that during any one three hundred and sixty-five successive days a municipality may borrow one-fourth of one per cent. of the taxable value of real estate in the municipality without referring the question of the borrowing to the people. Therefore, one-fourth of one per cent. could be borrowed this year, one-fourth of one per cent. the next year, one-fourth of one per cent. the next, and so on, provided, of course, that the total borrowing capacity of the municipality had not been exceeded. As I understand it, the arguments which were urged upon the commission when you adopted that were that at any one time a municipality should have the right to meet an emergency by borrowing a small amount without being obliged to hold a municipal election. The other principal change in this section as adopted is the change that the basis of the ten per cent. borrowing power is to be paid on the taxable real estate and not on the taxable assessed value or the taxable property in a municipality, as under the present constitution. As I understand it the reason given before you and which doubtless led you to adopt that change was this, that the legislature could pass under the existing and present constitution a law permitting a tax of a mere nominal character on bank deposits, personal property of any kind, or property within the municipality, and by that tax, without increasing the resources of the municipality, could greatly increase its borrowing power, and therefore that the borowing power should be based on some percentage of the value of the real estate within the municipality.

The exact effect of that change and of the changes as a whole on the borowing power of the principle municipality of the state in size and population, the members of the committee on style directed me to ascertain, and it is set forth in the note to the commission, the effect of the proposed borrowing capacity of Philadelphia, supposing this provision to go instantly into effect. The total borrowing capacity for many purposes of public improvement is greatly increased, but for general purposes the borowing capacity may be slightly decreased because of the condition changing the basis of borrowing from the assessed value of the taxable property to the assessed value of the real estate inside of the city. For instance, at the present time the borrowing capacity of Philadelphia would be reduced from two hundred and sixty-three million to one hundred and ninety-four million dollars, a reduction of over sixty-nine million dollars. Now, the reduction is made up by these other things, but not completely for general purposes. For purposes of public improvement, which result

in great special increases in the value of property, the section as adopted certainly greatly increases the borrowing capacity. For general purposes it probably slightly decreases the borrowing capacity.

The other matter in this section which should be called to your attention at this time is this, that as you adopted this section there are at least two places in it which assume that there is to be in existence on the adoption of this constitution a state-wide agency to control municipal indebtedness. Clause (d), for instance, takes the place of the amendment recently passed as far as Philadelphia is concerned, but it makes this quite fundamental difference because it says "so much of any debt incurred within five years to acquire public improvement as an agency created by law with state-wide jurisdiction shall consider likely to be allowable under paragraph (b)." The present constitution as applying to Philadelphia under the recent action of the electorate is that they can borrow an amount of money which represents the capitalization of the net revenue from the public improvements that they have purchased. Now, who is to estimate that net revenue? It is not stated. It is left to the municipality to estimate it in the first place, and the court in any legal proceedings to correct the estimate made by the municipality in the second place. In clause (g) as adopted by the commission, the municipality may borrow eighty per cent. of the amount which it is estimated as prescribed by law that the municipality will receive from assessments for benefits. The estimation must be made in a manner prescribed by law; but it is not, as in the case of (d), subject to the jurisdiction of the state-wide agency. This state-wide agency is not, as I said, elsewhere mentioned in the constitution. To make this provision workable, if adopted, the legislature would have to create a state-wide agency.

Mr. CUYLER. Why do you use the expression, "three hundred and sixty-five days," instead of a year? Don't you become confused in leap years?

The SECRETARY. That was put in by the committee on style for this reason: If the provision is that in any year a municipality may borrow one-quarter of one per centum, the question was as to whether it is a calendar year or whether it is a successive three hundred and sixty-five days, and to make it certain, as I understand it, the committee put in "three hundred and sixty-five days." During any such period the city can without reference to the electorate on the question borrow one-fourth of one per cent. of the taxable value—

Mr. CUYLER. It seems to me, however, Mr. Chairman, that the citizens of a city could much more readily keep account of that borrowing power as to the time limit by putting it in as a calendar year rather than this "three hundred and sixty-five days." You get very much mixed up in it, and I would move to amend that by substituting the word "year" for "three hundred and sixty-five days."

The SECRETARY. You mean a calendar year?

Mr. CUYLER. I mean a calendar year.

Mr. REED. Mr. Chairman: I second the amendment.

On the question,

Will the committee agree to the amendment?

The SECRETARY. I think I correctly represent the committee when I say that all decided that there should be no misunderstanding.

Mr. CUYLER. I think it would be very much clearer.

On the question recurring,

Will the committee agree to the amendment?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

Mr. FISHER. I would like to offer an amendment by striking out in line 2 the words "or by an agency created by law with state wide jurisdiction," so that the clause will read, "A municipality may incur debts by borrowing money as prescribed by law if its aggregate debt for borrowing money would not exceed the sum of." To harmonize with that I desire to amend by striking out in line 14 the words "an agency created by law with state-wide jurisdiction shall consider," and insert "shall be."

Mr. FOX. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the committee agree to the section as amended?

Mr. FISHER. Mr. Chairman: As this is drafted, the ten per cent. applies only to the valuation of real estate. The secretary referrd to that. That is going to make a very vital change in the borrowing power of any municipality. Now we must remember that there are a great many of the municipalities outside of the large cities, many small ones—we are increasing the number of municipalities by making school districts municipalities, when they are not heretofore so considered—and we must keep in mind that in restricting the borrowing power of these great municipalities it will cripple and practically, put out of business the smaller ones. I would like to offer an amendment to restore the language of the present constitution so that it will read, instead of real estate, "the taxable property therein." The clause will then read, "ten per centum of the assessed value of the taxable property therein."

The CHAIRMAN. The chair seconds the amendment.

On the question,

Will the committee agree to the amendment?

Mr. McCORMICK. What would that do?

Mr. FISHER. You can include all other assessable or taxable property in addition to the real estate.

Mr. REED. It is only taxable for certain purposes.

Mr. McCORMICK. In Harrisburg today we base our bond issues upon seven per cent. of the real estate assessment.

Mr. FISHER. No, Mr. McCormick is wrong. You can include all other assessable or taxable property in addition to the real estate. It may so happen that the great bulk of your property is in real estate, but this amendment would not include moneys loaned out or moneys in the bank or any other property.

Mr. GORDON. Are not household goods personal property?

Mr. FISHER. That is right.

The CHAIRMAN. All those things are included in the assessment.

On the question recurring,

Will the committee agree to the amendment?

It was agreed to.

Mr. McCORMICK. Mr. Chairman: May I ask the commission if they believe that there is a demand in the smaller communities to

increase the percentage from seven to ten, whether they have any evidence of that?

Mr. FISHER. Yes, I can say that I think there is. With the increased activities of municipalities it is necessary to broaden their powers of raising money. We have up in our county, Mr. McCormick well knows, growing communities located in the mining region. These towns grow rapidly and it is difficult to take care of all the municipal demands that are made on them unless they have an increased borrowing capacity.

Along the same line I desire to call the attention of the commission to the clause, including lines 30 to 33, which makes two changes in the power of the municipality to incur debt for current purposes without the assent of the electors of the municipality. In the first place, it limits them to one-fourth of one per cent. in a year. Now, that would be practically valueless in these small municipalities. That would mean a very large sum, of course, in a city like Philadelphia or Pittsburgh or Scranton, but in a small borough or in a small district it would be practically negligible. It seems to me that is too great a restriction to place upon these small municipalities. It makes another change in that this provides for a progressive accumulation of debt. The municipality this year could incur one-fourth of one per cent. of the assessed value of its property. That it could put into permanent form. Next year it could do the same, and the next year could again do the same and so on indefinitely until in the end it had accumulated a very large indebtedness without the consent of the people. Now, for those two reasons I think we ought to hesitate to incorporate it in our draft of the constitution. I believe, as we decided when we had this subject up first, that we might safely leave to the municipality the incurrence of any debt that would not increase it beyond three per cent. without the sanction of a popular vote. With that thought in mind, merely to bring it up, because I only do it for the purpose of drawing forth discussion, I offer this amendment: In lieu of the words included in lines 30 to 33 insert the following: "and indebtedness incurred by a municipality in excess of three per cent. of the assessed value of the taxable property shall be approved by a majority of the electors thereof at a public election held in such manner as shall be provided by law."

Mr. REED. Mr. Chairman: I second the amendment.

On the question,

Will the committee agree to the amendment?

Mr. McCORMICK. I rather doubt the wisdom of that. It seems to be making it rather strong for a city of our size. We have sixty million dollars of assessed valuation, and three per cent. would permit our council to borrow one million eight hundred thousand dollars.

The CHAIRMAN. Two per cent?

Mr. McCORMICK. I think two per cent is ample for cities of our size. I can see the Senator's troubles in the small community with less assessment. Could they be classified?

The CHAIRMAN. In a third class city it is tremendously important that we should have that extra one per cent. if we could get it. We are not creating a situation which will fit every municipality. We must try to work out something that in its broad effect is the best.

Mr. McCORMICK. We are making a constitution here for years. We are going through a great period of inflation and terrific costs

and terrific expenses. It seems to me we ought to be conservative in our percentage of increase in debt at a time like this, if we are to be more or less governed by the temper of the time, which is certainly one of inflation. I think we have gone along in Harrisburg, we have spent millions here and under the seven per cent. of our assessed valuation and if most of these communities put their assessed valuation at one hundred per cent. of the value instead of fifty per cent. of ther value as they now do, they can increase their seven per cent. to over ten per cent. They have undervalued it in that way. I feel very strongly that we ought to be very careful and move cautiously on that question of increasing an indebtedness and put into this constitution a very safe and conservative provision to hold it down.

On the question,

Will the committee agree to the amendment?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVIII-A, SECTION 23.

The committee of the whole proceeded to the consideration of section 23 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

DURATION AND PAYMENT OF DEBTS.

1 Section 23. A municipality shall not incur a debt maturing more than fifty
2 years from its incurrence. The aggregate amount of principal and interest
3 payable in repect to a debt in any year shall not be less than the amount
4 payable in any later year unless another method of amortization is authorized
5 by an agency created by law with state-wide jurisdiction.
6 On or before incurring a debt by borrowing money, the municipality shall
7 provide for the collection of an annual tax sufficient to pay the principal and
8 interest as they fall due.

NOTE.

Source: Article IX, section 10:

"Any county, township, school district or other municipality incurring any indebtedness shall, at or before the time of so doing, provide for the collection of an annual tax sufficient to pay the interest and also the principal thereof within thirty years."

(2) Article XV, section 3:

"Every city shall create a sinking fund, which shall be inviolably pledged, for the payment of its funded debt."

(3) Part of article IX, section 8:

"* * * In incurring indebtedness for any purpose, the city of Philadelphia may issue its obligations maturing not later than fifty years from the date thereof, with provision for a sinking fund sufficient to retire said obligations at maturity, the payment to such sinking fund to be in equal or graded annual or other periodical instalments. Where any indebtedness shall be or shall have been incurred by said city of Philadelphia for the purpose of the construction or improvement of public works of any character, from which income or revenue is to be derived by said city, or for the reclamation of land to be used in the construction of wharves or docks owned or to be owned by said city, such obligations may be in an amount sufficient to provide for, and may include the amount of, the interest and sinking-fund charges accruing and which may accrue thereon throughout the period of construction, and until the expiration of one yeear after the completion of the work for which said indebtedness shall have been incurred; and said city shall not be required to levy a tax to pay said interest and sinking fund charges as required by section ten, article nine of the constitution of Pennsylvania, until the expiration of said period of one year after the completion of said work." (Amendment of November 5, 1918.)

(4) Part of article IX, section 15:

"* * * Where municipalities or counties shall issue obligations to provide for the construction of property, as herein provided" i. e., waterworks, subways, underground railways or street railways or appurtenances

thereto) "said municipalities or counties may also issue obligations to provide for the interest and sinking-fund charges accruing thereon until said properties shall have been completed and in operation for a period of one year; and said municipalities and counties shall not be required to levy a tax to pay such interest and sinking-fund charges, as required by section ten of article nine of the constitution of Pennsylvania, until after said properties shall have been operated by said counties or municipalities during said period of one year." (Amendment of November 4, 1913.)

Changes in substance: (1) The right of the city of Philadelphia, in incurring indebtedness for the construction or improvement of public works of any character from which income is to be derived by the city or for the reclamation of lands to be used in the construction of wharves and docks owned or to be owned by the city, and the right of other municipalities, in incurring indebtedness for the construction of water-works, subways, underground railways or street railways or appurtenances thereto, to include the amount of the interest and sinking-fund charges accruing or which may accrue throughout the period of construction and until one year after the completion of the work, thus relieving the municipality from the obligation to pay interest and sinking-fund charges on the debt out of current revenues until the expiration of one year after the completion of the work, is abolished.

The disastrous effects of the provision of the present constitution is shown by the figures submitted to the commission by the department of city transit in Philadelphia. In 1916, $4,000,000 bonds were issued to obtain money for the construction of transit facilities. By the end of 1920, twenty per cent. of this amount will have been used to pay the interest and sinking fund charges on account of these bonds. As all work on the sections of subways for which the money was largely borrowed has been stopped, it will be preceived that a large proportion of the loan will be eventually consumed in the carrying charges. All of which means that the people of Philadelphia, by being permitted to postpone the day when the carrying charges on the transit loans will have to be paid out of taxation, may have doubled the amount which will ultimately have to be met by taxation.

(2) The extension to all municipalities of the right to issue bonds maturing in fifty years irrespective of the purposes for which the bonds are issued.

Under the present constitution, all bonds issued by a municipality must mature within thirty years, except bonds issued by the city of Philadelphia, which must mature not later than fifty years from the date of issue.

The longer term reduces the annual amortization charges. The commission believe that a municipal bond should not be outstanding longer than the life of the public improvement for the acquisition of which the debt was created. The extension of the term does not violate the principle as the more expensive class of public improvements, as subways, docks and water-works, are constructed to last for a much longer period than fifty years.

(3) The establishment of the the serial bond system in lieu of the sinking fund and amortization, unless the sinking fund system of amortization is authorized by an agency created by law with state-wide jurisdiction. This is in accordance with modern practice.

Changes in Style: The commission's rules of style have been followed.

On the question,

Will the committee adopt the section as reported?

Mr. FISHER. Mr. Chairman: I move to strike out line 4, after the word "unless," the words, "another method of amortization is authorized by an agency created by law with state-wide jurisdiction," and insert the following: "the sinking fund method of amortization is authorized by law. Such sinking fund shall be sufficient to pay the accruing interest on such debt and annually to reduce the principal by a sum not less than three per cent. of such principal. The money in such sinking fund shall be invested in the bonds of the United States, the government or the municipality."

On the question,

Will the committee agree to the amendment?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVIII-A, SECTION 23-B.

The committee of the whole proceeded to the consideration of section 23-B as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

DEBTS OTHER THAN FOR MONEY BORROWED.

1 Section 23-B. A municipality shall not incur a debt otherwise than by
2 the borrowing of money unless there has been an appropriation to pay the debt.

NOTE.

Source: Article XV, section 2:

"No debt shall be contracted or liability incurred by any municipal commission, except in pursuance of an appropriation previously made therefor by the municipal government."

Changes in Substance: In the present constitution, article XV, section 2 apparently enunciates the principle that no agency other than the municipality itself can incur, for the municipality, debt or liability "except in pursuance of a previous appropriation therefor by the municipal government." The commission, however, believe that the constitution should express a far wider principle; namely that debt, other than the borrowing of money, cannot be incurred by a municipal government unless an appropriation has been made by such government to pay such debt. The section as proposed expresses this principle.

We have worded this section and article XVIII-A, section 23-D (article III, section 20, of the present constitution), so that they are confined to prohibitions on a municipality in respect to the creation of a debt, and article XVIII-A, section 23-D, so that it is confined to prohibitions on the state government creating municipal commissions to perform municipal functions.

Changes in Style: The commission's rules of style have been followed.

Special Note to the commission by the committee on style.

As adopted by the commission, this section was numbered article XVIII-A, section 20, and read as follows:

"No debt shall be contracted or liability incurred by any municipal commission, board, officer, employe or other agency, except in pursuance of an appropriation previously made therefor by the municipal government."

As explained in the Note to the section, the amendment adopted by the commission made a fundamental change in the section as it stands in the present constitution (article XV, section 2). As amended, it expresses the principle that a municipality shall not incur liability by the action of any officer except in pursuance of an appropriation previously made therefor. This in terms would prevent a municipality from incurring a liability by the negligent act of an officer or employe carrying on a municipal function. This was, of course, not intended by the commission. The re-wording of the section which we have suggested avoids this result, while preserving the intent of the commission to prevent a municipality incurring debt, other than the borrowing of money, except in pursuance of a prior appropriation. (See article XVIII-A, section 23-D, for prohibitions on the state government in respect to the creation of a municipal commission.)

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE XVIII-A, SECTION 23-C.

The committee of the whole proceeded to the consideration of section 23-C as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

MUNICIPALITIES NOT TO BECOME STOCKHOLDERS IN CORPORATIONS OR ASSOCIATIONS, NOR LOAN CREDIT.

1 Section 23-C. A municipality shall not pledge or lend its credit to and shall
2 not be a stockholder or owner in a corporation or association. Except to dis-
3 charge municipal liabilities, it shall not appropriate money to assist a private
4 business enterprise.

5 The provisions of this section shall not be construed to apply to the lease
6 by a municipality to a corporation of a public service facility for a rental
7 dependent on the earnings of the lessee if the corporation covenants to operate
8 the facility and an agency created by law to regulate public utilities approves
9 the lease.

NOTE.

Source: Article IX, section 7:

"The general assembly shall not authorize any county, city, borough, township or incorporated district to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to any corporation, association, institution or individual."

Changes in Substance: None.

Clarifying Amendments: The commission believe that the intent of the drafters of the section in the present constitution was to prevent a municipality assisting a business enterprise. The methods of assistance were to become a stockholder, and to appropriate money for or lend its credit to the enterprise. In attempting to embody the principle in the section, the section was so worded as to make it impossible for the courts to construe it as meaning what it says. It says: "The general assembly shall not authorize any county, city, borough or incorporated district to become a stockholder in any company, association or corporation or to obtain or appropriate money for or to loan its credit to any corporations, association or individual. Interpreted literally, this would prevent, on the one hand, the appropriation of money to a corporation, association, institution, or individual in payment of the debts of the municipality; and, on the other, it would prevent all gifts by the municipality to any corporation, association, individual or institution. Thus the payment of money for widows' pensions would be clearly unconstitutional. The courts have attempted to construe the section so as to make it, if possible, workable, with the result that the recorded decisions, while they reflect a certain practical common sense, are difficult to reconcile and there is always the possibility of litigation raised by a taxpayer's bill to restrain an appropriation which while clearly within the language of the prohibition of the section, is probably within the intent of its drafters. In redrafting the section, we have attempted to confine the first paragraph to a clear expression of the principle that a municipality should not become a partner in or lend its aid to a business enterprise. No attempt is made to prevent a gift by a municipality provided the gift is not in assistance of a business enterprise.

The second paragraph is inserted to meet the following situation: The people of a city desire a public service facility of a particular character, as, for instance, subways for street railway passenger traffic. From a commercial point of view we will suppose it is not possible to finance the cost of construction because the returns from the operation of the facilities will not yield, above the cost of operation, sufficient return to pay the interest on the cost. The city constructs the facility, not with the intent of operating it but with the intent of leasing it to an operating company. Under the circumstances supposed, it is not possible for the city to secure an operator who will agree to pay the city at all events the ordinary rate of interest on the cost of the facility. Perhaps the best lease, from the point of view of the city's interest, that can be made under the circumstances is a lease in which the operator is not obligated to pay any rent unless the rent is earned out of current revenues above operating expenses. Under the wording of the section in the present constitution, a doubt has arisen whether such a lease would not be held to be a loaning of money. A decision to this effect, under an almost similar provision of the Ohio constitution, has been made by the supreme court of that state.

(See State ex rel. Campbell vs. Cincinnati Street Railway Co., 97 Ohio State, 283.)

Under the wording of the second paragraph of the section here proposed, it is clear that such a lease would not violate the provisions of the first paragraph of this section.

Changes in Style: The commission's rules of style have been followed.

Special Note to the commission by the committee on style.

As adopted by the commission, the section was numbered article XVIII-A, section 21.

On the question,
Will the committee adopt the section as reported?
It was adopted.

ARTICLE XVIII-A, SECTION 23-D.

The committee of the whole proceeded to the consideration of section 23-D as reported by the committee on style.

The secretary read the section, notes and recommendations of the committeee on style as follows:

SPECIAL COMMISSIONS PROHIBITED.

1 Section 23-D. No law shall delegate to a special commission, corporation or
2 association a power to perform a municipal function, make, supervise or inter-
3 fere with a municipal improvement, municipal property or money, whether
4 held in trust or otherwise.

NOTE.

Source: Article III, section 20:

"The general assembly shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, or to levy taxes or perform any municipal function whatever."

Changes in Substance: None.

Changes in Style: The commission's rules of style have been followed.

SUMMARY OF SECTIONS AS PROPOSED AFFECTING THE POWER OF THE STATE GOVERNMENT OVER MUNICIPALITIES.

The intent of the drafters of article III, section 20 and article XV, section 2, was to prevent the creation by the state government of boards with purely local duties, the members of which were appointed by the governor or other office not an officer of the municipal government.

This section should be read in connection with article XVIII-A, section 6-A, as proposed, which provides that appointive municipal officers shall be appointed by an officer or agency of the municipality as prescribed by law, and with article XVIII-A, sections 3 and 4, which prevent the creation of counties, cities or boroughs without the consent of a majority of the electors resident within the proposed boundaries.

The result of the provisions of this section and the sections referred to will be:

(a) The framework of the county government must remain as set forth in the constitution.

(b) New counties can be created and changes in the boundaries of counties can only be made with the assent of a majority of the electors, voting on the question, resident within the proposed boundaries.

(c) Cities and boroughs can only be created with the assent of a majority of the electors, voting on the question, resident within the proposed boundaries.

(d) No agency not part of the municipal government can perform a municipal function.

(e) Appointed officers in all municipalities must be appointed by an officer or agency of the municipality.

All matters pertaining to the incurring of debt by a municipality otherwise than by the borrowing of money have been placed under article XVIII-A, section 23-B.

Special Note to the commission by the committee on style.

As adopted by the commission, this section was numbered Article XVIII-A, section 6.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE XVIII-A, SECTION 23-E.

The committee of the whole proceeded to the consideration of section 23-E as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

ASSESSMENT OF BENEFITS FOR PUBLIC.

1 Section 23-E. Laws may be enacted authorizing assessments against properties
2 which are specially and particularly benefited by public improvements made by
3 the state government or by a municipality, whether or not such properties abut
4 upon such public improvements.

Source: This is entirely new matter.

The principle embodied in this section is to assess the direct special monetary increase in values caused by a public improvement upon the properties specially benefited, whether directly abutting on the improvement or not. The payment of the assessment can be, and we believe generally will be, spread over a period of ten years.

While an important public work causes a general much-diffused increase of values over the whole community, there is always a direct special benefit on the property very directly within the sphere of influence of such a work, and it is only this specially benefited property that may be assessed specially under this section.

The method of paying for improvements through the assessment of benefits upon properties affected, whether or not they touch the improvement, is finding more and more general application throughout the United States. Under the present constitution, as interpreted by the courts, such assessments are limited to abutting properties, an arbitrary rule that accords with neither fact nor justice.

That the opening of streets, the construction of transportation lines, the creation of parks and other large municipal improvements greatly increases the value of property is proven in every case where such improvements have been made, and it is very seldom that the owners of property benefited contribute any substantial aid, financial or otherwise, toward the improvement.

In Philadelphia, the opening of the Boulevard from Broad street through the northeastern part of the city more than doubled the value of property in its vicinity.

Prior to the construction of the Market street subway-elevated line in that city the average annual increase, during several years, in the assessed value of property in the West Philadelphia wards was about $2,300,000, while the average increase in the same area since its construction has been about $11,500,000, most of which has been in the section served directly by the car lines using the subway. The territory benefited contributed nothing towards the construction of the lines, although it received enormous benefits.

It should be appreciated that failure to assess special benefits, where there are special benefits, cripples the progress of a city and prevents other property owners from getting improvements to which they are equally entitled. A city has only a certain sum to spend on developments; the assessment of benefits will make that sum go much further than it would if there were no such assessment. It is, we believe, no exaggeration to say that without the amendment to the present constitution embodied in the section herein proposed, it will not be possible to make, in the old and more densely populated cities of the state, the public improvements necessary to enable them to become and to continue to be attractive places of residence.

The principle embodied in the section applies to improvements made by the money of the taxpayers whether the agent carrying on the improvement is the municipal government or the government of the state. We have, therefore so worded the section as to apply to the state government. We however, placed the section under this article on municipalities, and not under Articles III, or IV, which deal with the organization and powers of the legislative and the executive branches of the state government, as we believe that this section and the next two sections, 23-F and 23-G, all relating to public improvements, should appear in one place in the constitution. As section 23-F for the reasons stated in the note to that section, should appear in this article, and section 23-G, relating as it does only to municipalities, must appear in this article; we have also placed in this article this section on the assessments of benefits for public improvements.

Special Note to the commission by the committee on style.

This section, as adopted by the commission, was numbered article XVIII-A, section 18.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE XVIII-A, SECTION 23-F.

The committee of the whole proceeded to the consideration of section 23-F as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

EXTENT OF LAND PERMITTED TO BE TAKEN FOR PUBLIC IMPROVEMENTS.

1 Section 23-F. When the public purpose for which land is taken can be best
2 attained by acquiring more land than the state government or the municipality
3 proposes to retain, the state government or the municipality, subject to regula-
4 tions prescribed by law, may take all the land which in its judgment is needed
5 for the attainment of such purpose and may dispose of portions thereof, subject
6 to restrictions protective of the public purposes.

NOTE.

Source: This is entirely new matter.

The amendment proposed in this section embodies the principle that when the public take land they should be able to take enough land to fully carry out the public purposes intended. As worded, it recognizes the fact that this in many cases necessarily involves taking some land which will not be permanently retained for public use. The reason for and the purpose of the section can be best made clear by the following illustration.

Suppose the public improvement desired by a city is a boulevard which will cut the boundary lines of properties fronting on the older existing streets at all sorts of angles. If the land taken is confined to the lines of the boulevard, it is impossible to carry out fully the object of the improvement, which is to have the boulevard lined by large and well-built public and private properties. Practically, this object can be obtained only by condemning the land on either side of the line of the proposed boulevard to a depth sufficient to afford suitable building lots fronting on the boulevard.

Already the facts here set forth have been recognized in other states. Massachusetts in 1911, Ohio and Wisconsin in 1912 and New York in 1913, have adopted amendments to their constitutions similar to the one embodied in this section.

It will be noted that the section applies to land taken by the state government as well as land taken by a municipality. It therefore, in strictness, should not be placed in an article the title to which indicates that it is confined to municipalities. We have placed it in this article because there is no other article to which it can be properly assigned. It does not require legislation to make it operative and therefore should not be placed in article III, and it would not seem advisable to create a separate article on the taking of land.

Special Note to the commission by the committee on style.

This section, as adopted by the commission, was numbered article XVIII-A, section 19.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE XVIII-A, SECTION 23-G.

The committee of the whole proceeded to the consideration of section 23-G as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

ZONING OF MUNICIPALITIES.

1 Section 23-G. Municipalities may be authorized by law to promote the gen-
2 eral welfare by regulating the location, size and use of buildings. For the
3 purpose of such regulations, a municipality may divide its territory into dis-
4 tricts, to each of which special regulations may be applied.

NOTE.

Source: This is entirely new matter.

We believe that it is generally recognized that a modern city, or a municipality created to govern a country district should have the power to divide its territory into zones for the purpose of making regulations which will enable each zone to be developed along lines suitable to its location, and permit the scientific planning of the development of the entire territory for the best interest of the whole community.

We therefore believe that the general assembly should have the right to grant to any class of municipalities the power to adopt what is popularly known as a zoning system, and have suggested the adoption of the section so as to remove, as far as possible, any constitutional objection that may exist to such legislation.

Special Note to the commission by the committee on style.

As adopted by the commission, this section was numbered article XVIII-A, section 19-A.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE XVIII-A, SECTION 23-H.

The committee of the whole proceeded to the consideration of section 23-H as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

CONTRACTS BETWEEN MUNICIPALITIES FOR PUBLIC WORKS.

1 Section 23-H. A municipality may, as prescribed by law, contract with
2 another municipality for the joint acquisition, construction, maintenance, super-
3 vision or operation of property and for the creation of agencies to effect any
4 of such purposes. Such agencies shall not levy taxes or borrow money. Every
5 such contract shall name arbitrators.

NOTE.

Source: This is entirely new matter.

There are many improvements, as, for instance, the proper drainage of a large district or its proper water supply, which are too large to be carried out by one municipality. Such improvements can be carried out in three ways:

(1) By the action of the state government.

(2) By the creation of a new class of municipalities for the purpose of carrying on the improvement.

(3) By the joint action of the municipalities, the territories of which are affected by the improvement.

The amendment embodied in the section here proposed will, if adopted, remove any possible constitutional objection to the third method.

Special Note to the commission by the committee on style.

This section as adopted by the commission was numbered article XVIII-A, section 5.

We have changed the last sentence so as to provide that such contracts shall name arbitrators. This, we think, is the intent of the commission. To merely have such contracts provide for the arbitration of any differences does not prevent a recourse to law by one of the parties thereto, unless the article specifically prohibits such recourse, if the plaintiff has fulfilled his part of the agreement with respect to the appointment of an arbitrator. If the commission really wish to put an effective clause in regard to arbitration into the section, it must provide for the naming of the arbitrators in the contract. If it does not wish to do this, all reference to arbitration should be omitted.

On the question,

Will the committee adopt the section as reported?

Mr. CUYLER. Mr. Chairman: I would like to offer an amendment to somewhat enlarge the scope of the section. The substitute for the section is:

"A municipality may, as prescribed by law, contract with one or more municipalities for the joint acquisition, construction, maintenance, supervision or operation of property, and for the creation of agencies to effect any of such purposes and the creation of such agencies as may be mutually agreed upon for the good government of the municipalities. Such agencies shall not levy taxes or borrow money. Every such contract shall name arbitrators."

I move the adoption of this substitute:

Mr. REED. Mr. Chairman: I second the substitute.

On the question.

Will the committee agree to the substitute?

Mr. FISHER. May I ask Mr. Cuyler whether or not he would be willing to insert before the word "property," in the third line, the word "public"?

Mr. CUYLER. Certainly.

Mr. FISHER. Mr. Chairman: I move to amend the substitute by inserting the word "public" before the word "property."

Mr. CUYLER. Mr. Chairman: I accept the amendment.

On the question recurring,

Will the committee adopt the substitute?

It was adopted.

ARTICLE XVIII-A, SECTION 23-I.

The committee of the whole proceeded to the consideration of section 23-I as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

CONSTRUCTION OF STREET PASSENGER RAILWAYS IN CITIES, BOROUGHS OR TOWNSHIPS.

Section 23-I. A street passenger railway shall not be constructed in a city, borough or township except with the consent of the municipality.

The provisions of this section shall not be construed to permit a restriction on the power of the state government to regulate the operation of such a railway.

NOTE.

Source: Article XVII, section 9:

"No street passenger railway shall be constructed within the limits of any city, borough or township, without the consent of its local authorities."

Changes in Substance: None.

Clarifying Amendments: The second paragraph of the section makes it certain that the wording of the first paragraph will never be construed to permit any action on the part of the state government or a municipal government as taking from the state government the right to regulate the operation of such street passenger railways as may be constructed with the consent of the local authorities. We believe that the retention in the state government of the police power of the commonwealth over the operation of all utilities is essential to public welfare.

Changes in Style: The commission's rules of style have been followed.

Special Note to the commission by the committee on style.

As adopted by the commission, this section was numbered article XVIII-A, section 17.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE XVIII-A, SECTION 23-J.

The committee of the whole proceeded to the consideration of section 23-J as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

ONE PLACE OF PAYING TAXES IN CITIES AND BOROUGHS.

Section 23-J. Laws shall be enacted to enable a taxpayer in each city and borough to pay all municipal taxes at one office.

NOTE.

Source: This is entirely new matter.

The adoption of this provision will, we believe, do away with the system of having different offices for the payment of county, school and city or

borough taxes. It will enable the residents of each city and borough to pay not merely city or borough taxes at one office, but all taxes—county, school or other taxes—except state taxes, at one office. There may be, after the adoption of the section, more than one office in a city or borough at which taxes are paid, but any one taxpayer will be able to pay all his municipal taxes at one office.

Special Note to the commission by the committee on style.

As adopted by the commission, this section was numbered article IX, section 15-A. We have transferred it from article IX, to this article, because as amended at the last session of the commission, its provisions were confined to municipalities.

On the question,

Will the committee adopt the section as reported?

It was adopted.

ARTICLE XVIII-E, SECTION 1.

The committee of the whole proceeded to the consideration of section 1 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

CHARITABLE INSTITUTIONS AND AGENCIES.

1 Section 1. Laws shall be enacted providing for the maintenance of an effi-
2 cient system of charitable institutions and agencies to care for residents of the
3 commonwealth who cannot care for and support themselves on account of
4 physical or mental infirmities or other misfortune and to prevent such infirmities
5 and misfortunes so far as possible.

NOTE.

Source: This is entirely new matter. As explained in the preliminary note to this article, it states a principle of government which should, in the opinion of the commission, find expression in the constitution of the commonwealth. The details of the system are necessarily left to be prescribed by law. It will be noted that the institutions and agencies mentioned may be either public or private.

On the question,

Will the committee adopt the section as reported?

Mr. THORPE. Mr. Chairman: I move, sir, that the section be modified in the second line by omitting the word "charitable."

Mr. TYSON. Mr. Chairman: I second the amendment.

On the question,

Will the committee agree to the amendment?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

It was agreed to.

ARTICLE XVIII-E, NEW SECTION.

Mr. FISHER. Mr. Chairman: Our very able and distinguished commissioner of health has handed me a matter which he desired to present to the commission. I have not considered it so as to know where it ought to be put in. It is as follows:

"The protection and promotion of public health under modern social, economic and industrial conditions is essential to the well-being of the commonwealth, and is hereby declared to be a primary duty of the government."

I move the adoption of this section.

Mr. GORDON. Mr. Chairman: I second the motion.

The section was adopted.

ARTICLE XVIII-E, SECTION 1-A.

The committee of the whole proceeded to the consideration of section 1-A as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

PENAL AND CORRECTIONAL INSTITUTIONS.

1 Section 1-A. Laws shall be enacted providing for the maintenance of an
2 efficient system of penal and correctional institutions and agencies. Convicts
3 shall be employed in useful labor and shall receive such treatment and instruc-
4 tion as shall tend to qualify them to become useful citizens. They shall receive
5 reasonable compensation for their labor.

NOTE.

Source: This is entirely new matter. Like the preceding section, it expresses an important principle, leaving the details to be prescribed by law.

Special Note to the commission by the committee on style.

Recommendations Of Change In Substance.

Strike out, lines 4 and 5. "They shall receive reasonable compensation for their labor."

Your committee believe that the payment of prisoners, though in practice often advisable, is a matter which should be left to be determined by law.

On the question,

Will the committee adopt the section as reported?

The CHAIRMAN. The recommendation of the committee is to amend the section by striking out lines 4 and 5: "They shall receive reasonable compensation for their labor."

On the question,

Will the committee agree to the amendment?

Mr. GORDON. Mr. Chairman: I move to strike out that section and substitute the following, which is the section that was adopted by the commission:

"Humanity, sound public economy and just consideration for the innocent dependents of persons deprived of their liberty, by judgment, decree or sentence of any court, require that all such persons should, during their imprisonment, be afforded, so far as practicable, an opportunity for remunerative labor. Such laws shall accordingly be enacted as may be necessary to give effect to this provision."

Mr. McCORMICK. Mr. Chairman: I second the substitute.

On the question,

Will the committee agree to the substitute?

Mr. FISHER. There is only one thing I have in mind as to whether or not it makes it mandatory to remunerate prisoners.

The CHAIRMAN. I do not so understand.

Mr. FISHER. Is that the purpose of the amendment?

Mr. GORDON. I intended to make it mandatory.

The CHAIRMAN. It has some qualifying phrases.

Mr. GORDON. That was not in it when I drafted it. I therefore change by amendment by striking out the words "as far as practicable."

The CHAIRMAN. I would like very much to vote for it, but I do not think I can without these words in it for the reason that I

have already stated to Judge Gordon. This mandate is to employ everybody at remunerative labor in prisons. I am afraid that it will be subversive to prison discipline. I do not want to leave the chair to say that. I am drafting an act that I am very much interested in because of my service on the board of pardons. It is to very greatly extend the scope of the employment in penitentiaries if we can get the goods there. Certainly there are two sides to the prison discipline question.

Mr. GORDON. Mr. Chairman: I do not know what effect the words "as far as practicable" would have on this amendment; nor do I know exactly what you have in mind, although I conversed with you on this subject yesterday. But the purpose of this amendment which I offered is to make it mandatory upon the keepers of prisons and the municipal bodies responsible for their existence to give every prisoner an opportunity to earn a living.

The CHAIRMAN. With that I am in most hearty accord if it can be worked out. I see the need of it in a most distressing way on the board of pardons.

Mr. GORDON. Mr. Chairman: Let me say to my colleagues whom I have not addressed on this subject before that it is a matter I feel very deeply about and have been interested in as long as I can remember in my manhood. The state has a right to take away the liberty of the citizen who has broken its laws, but it has no right in addition to take away all his property, his power to earn a living and support his family. When a man who is a laborer or mechanic is in prison and given no opportunity to earn a living for those dependent ones and use the tools which God gave him to do it with, you do more than imprison that man. You confiscate his estate, all the estate he has. You inflict upon the man more than incarceration. You inflict upon him and his family the degradation and sorrow of poverty. It is not intendeed in the penal code that that should be done, and this principle is large enough and deep enough to write into the constitution in plain and mandatory words. I believe that the darkest pages in the government of the state are the penal laws of the state so far as the punishment of criminal offenders is concerned. It is inhuman, it is unjust, it is unscientific, it is deeply cruel, it inflicts conditions upon the unfortunate sinner that God does not inflict and that only the cruelty and hard-heartedness of man inflicts. The criminal is put in prison, and everything as to his future, his family, is disregarded; unhygienic conditions, and above all, as I have said before, his family is stricken with poverty. I therefore hope that nothing will be done to impair the effectiveness of the mandatory clause in this instrument. Let the discipline of these institutions be adapted to this humane duty, this duty of justice. I think the fears that the warden had who talked to your honor were only the fears which all those have who are the custodians of the bodies of their fellows. They very often become themselves callous, and they very often attribute to discipline and punishment a value which it has not got, because the ages have taught that charity, love and humanity are the best discipline and are the surest path to reform.

Mr. FISHER. Now, do I understand it, that the words "as far as practicable" have been dropped?

Mr. GORDON. Yes, sir.

Mr. FISHER. Mr. Chairman: I appreciate fully the humanity that inspires the author of this section. It is very worthy. It is one that has engaged the attention of a great many good people in our commonwealth. We have tried to work toward prison reform. I have some personal knowledge of it. We have acquired a large property up in the middle part of the state and are establishing one of the finest, most modern and up-to-date prisons probably in the United States or the world. The whole spirit that animates that great work is one of reform rather than of punishment. Any one who goes up there can not help but be impressed with the humane manner in which those prisoners are handled. They are sent out and given employment. They are trusted as far as possible. They are tried out, tested and encouraged in ways of reformation. Everything is done to enable them to recover their lost power of control so that they can go back to useful citizenship. But I am afraid, if we make a provision mandatory that they should be paid for any services rendered, that the wardens would be met with very serious resistance on the part of the body of the prisoners. Suppose they would say: "We will just sit down and do nothing." They rebel, they go on a strike, they say, "We stand on our constitutional rights—"

Mr. GORDON. Permit me to interrupt you.

Mr. FISHER. Certainly.

Mr. GORDON. Surely that is unsound. All this amendment would do in respect to prisoners would be to give them an opportunity for remunerative employment. In the way of discipline there may be imposed that which is reasonable and just. They may be required to do in return for their certain offices. Discipline may be inflicted for the refusal to do that, but in addition to that give them a chance for remunerative labor. That is all. I am sure what you suggest could not occur.

Mr. FISHER. If that is the purpose and meaning of this substitute, I can only be in accord with it.

The CHAIRMAN. Will Judge Gordon read that again, because I want to vote for it, and just want a doubt in my mind cleared up?

Mr. GORDON. "Humanity, sound public economy and just consideration for the innocent dependents of persons deprived of their liberty, by judgment, decree or sentence of any court, require that all such persons should, during their imprisonment, be afforded an opportunity for remunerative labor. Such laws shall accordingly be enacted as may be necessary to give effect to this provision."

The CHAIRMAN. I think we could work that out in the great penitentiary at Belefonte.

Mr. FISHER. In view of Judge Gordon's explanation, I withdraw my objection to it.

On the question recurring,

Will the committee agree to the substitute?

It was agreed to.

ARTICLE XVIII-E, SECTION 2.

The committee of the whole proceeded to the consideration of section 2 as reported by the committee on style.

The secretary read the section, notes and recommendations of the committee on style as follows:

SUPERVISION OF CHARITABLE, CORRECTIONAL AND PENAL INSTITUTIONS AND AGENCIES.

1 Section 2. Charitable, correctional and penal institutions and agencies shall
2 be subject to governmental inspection and supervisory control. The power to
3 enforce the law with respect to such institutions shall be vested in one or more
4 departments of the state government or in such agencies as may be prescribed
5 by law.

NOTE.

Source: This is entirely new matter, imposing upon the law-making authority the duty of vesting in one of the departments of the state government the power to inspect and control the institutions named. In the judgment of the commission this is necessary if the principles contained in the two preceding sections are to be followed not simply in theory but in practice.

Special Note to the commission by the committee on style.

Article XVIII-D, section 2, as adopted by the commission has been incorporated in this section.

Recommendations Of Change In Substance.

The commission referred to us for consideration and report a section proposed by organizations interested in social conditions worded as follows:

"The power of all free governments extends to the protection of the health, morals and welfare of all citizens, the regulation of the conditions of labor and employment, and the determination of the minimum wage for women and minors."

Your committee believe that the insertion of the section proposed would not be advisable. It is unnecessary to state the universally recognized principle that the power of all free governments extends to the protection of the health, morals and welfare of all citizens. Your committee also believe that it is better policy to leave to the courts to work out in each case as it arises the correct application of the principles which determine the extent to which the law, in the interests of the many, may regulate individual contractural relations.

On the question,

Will the committee adopt the section as reported?

Mr. McCORMICK. Mr. Chairman: In view of the fact that we have stricken out of section 1 the word "charitable," I would like to insert in section 2 the following after the word agencies on line 1 "and all other institutions and agencies for the care, relief or treatment of residents of the commonwealth having physical or mental infirmities."

Mr. GORDON. Mr. Chairman: I second the amendment.

On the question,

Will the committee agree to the amendment?

It was agreed to.

On the question,

Will the committee agree to the section as amended?

Mr. THORPE. Permit a little further modification of that. It is suggested that lines 1 and 2 be so modified "Charitable, correctional and penal institutions and agencies," that those words be stricken out and insert in lieu thereof the words "Institutions and agencies for punishment or for the care or relief of persons with physical or mental infirmities." I think that Mr. McCormick's amendment includes the word "charitable." The idea is to get rid of that word "charitable" as one of the evils.

Mr. McCORMICK. I have inserted in addition to the word "charitable" "other institutions and agencies."

Mr. THORPE. It is just that word "charitable."

Mr. McCORMICK. I think that is probably the same thing.

The CHAIRMAN. The chair does not quite understand what the point of difference is.

Mr. THORPE. It is a verbal difference. If the secretary will compare the two suggestions he will see that at once. If Mr. McCormick's amendment includes the word "charitable," my modification would be in point.

Mr. McCORMICK. I leave the first line of the sentence as it is written "Charitable, correctional and penal institutions and agencies," and add "and all other institutions and agencies for the care, relief or treatment of residents of the commonwealth having physical or mental infirmities." That makes four classes, I think. I am willing to accept any other suggestion that gives the same idea.

The SECRETARY. The first suggestion seems to be an addition, an amendment, by adding in line 2 after "agencies" the words "and other institutions and agencies for the care, relief or treatment of persons having physical or mental infirmities," so that the first sentence would read "Charitable, correctional and penal institutions and agencies and other institutions and agencies for the care, relief or treatment of persons having physical or mental infirmities shall be subject to governmental inspection and supervisory control."

The other amendment is an amendment to strike out in line 1 the words "Charitable, correctional and penal institutions and agencies," and insert in lieu thereof "Institutions and agencies for punishment, or for the care or relief of persons with physical or mental infirmities shall be subject to governmental inspection and supervisory control."

Mr. McCORMICK. Would that require the inspection of poorhouses and Salvation Army homes and agencies of that sort?

The SECRETARY. Of any institution or agency for punishment or for the care or relief of persons with physical or mental infirmities.

Mr. McCORMICK. It seems that only covers two classes. The original wording, "Charitable, correctional and penal," covers practically everything; but there is a class of people, the mentally infirm, who are charitable patients, who are put in institutions which should be inspected, and therefore we created several classes for these people. That was the idea of my amendment. If the other can be worded so that it covers that, I am perfectly satisfied.

Mrs. MILLER. It would seem we are leaving dependent children out of that classification. Are they infirm, or are they there for correctional purposes? I do not see why we can not leave the word "charitable" in.

Mr. McCORMICK. And create a new class?

The CHAIRMAN. Dr. Thorpe, do you press your amendment?

Mr. THORPE. No, sir; not at all. It was only handed to me. It was supposed to cover certain desirable ground, that is all.

On the question recurring,

Will the committee agree to the section as amended?

It was agreed to.

CONCLUDING SECTION.

The committee of the whole proceeded to the consideration of the section as reported by the committee on style.

The secretary read the section and note of the committee on style as follows:

CONCLUDING SECTION.

Wherever a term in the masculine form is used in this constitution, it refers to men and women alike.

NOTE.

Source: This is entirely new matter. It is necessary because it has been impossible to draft a constitution without using the masculine pronoun. To say "he or she," or "him or her" on every occasion would be awkward in the extreme.

On the question,

Will the committee adopt the section as reported?

It was adopted.

NEW SECTION.

Mr. FOX. Mr. Chairman: I move that we add the following sentence: "The general assembly shall enforce by appropriate legislation the provisions of this constitution."

The CHAIRMAN. This thought occurs to me. There are certain provisions in the constitution that have been held to be self-executing. It may have been thought wise by the men who framed the constitution of 1874 to confine that section to corporations with that thought in mind. That is to say, if you put that provision in, might not the effect be that no provision of the constitution would be held to be self-executing? I think that is worthy of thought.

Mr. FOX. All right, sir, I withdraw that.

The CHAIRMAN. There is another matter that the commission is concerned in. The recommendation of the committee on style is that the sections be divided into fourteen articles as shown in the report, which arrangement is as follows:

ARRANGEMENT OF ARTICLES IN REVISED CONSTITUTION.

We recommend that the arrangement of articles in the revised constitution be as follows:

Article I—Declaration of Rights.
Article II—The Legislature.
Article III—Legislation.
Article IV—The Executive.
Article V—The Judiciay.
Article VI—Suffrage and Elections.
Article VII—Public Servants.
Article VIII—Taxation and Finance.
Article IX—Corporations.
Article X—Public Utilities.
Article XI—Education.
Article XII—Social Welfare.
Article XIII—Municipalities.
Article XIV—Amendment and Revision.
Concluding Section.

The above suggested arrangement groups the articles in the following manner:

First: Bill of Rights—article I.

Second: Organization and powers of the three branches of the state government—legislative, executive and judicial—articles II to V.

Third: Matters pertaining to suffrage, elections, and public servants—articles VI and VII.

Fourth: Special provisions for particular subjects primarily affecting the activities of the state government—articles VIII to XII.

Fifth: Local government—article XIII.

Sixth: Amendment and revision—article XIV.

Will make a motion, if it is agreeable to the commission, to adopt that arrangement?

Mr. McCORMICK. Mr. Chairman: I move that the arrangement suggested by the committee on style be adopted.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

The CHAIRMAN. The next matter to be considered is the arrangement of the sections. The suggestions of the committee on style as to the arrangement of the sections are as follows:

THE SYSTEM TO BE USED IN NUMBERING THE SECTIONS.

We call the attention of the commission to the fact that when the revised constitution is adopted by the commission, action will have to be taken regarding the numbering of the sections. Your committee have considered the three possible methods, namely, to:

(1) Number the sections under each article consecutively, the first section in each article being numbered section 1. This is the system in the present constitution.

(2) Number the sections consecutively throughout the constitution regardless of articles. The advocates of this system claim that it greatly facilitates finding a particular section.

(3) Number the sections consecutively under each article, the first section in article I to be numbered 100, the first section in article II, 200, and so on throughout the constitution. The advocates of this system claim that it is an improvement on the section system because it still further facilitates finding any particlar section.

We recommend the adoption of the first of these methods, which, as stated, is the method employed in the present constitution.

Mr. FOX. Mr. Chairman: I move that the recommendation of the committee on style as to the adoption of the first of these methods be agreed to.

Mr. McCORMICK. Mr. Chairman: I second the motion.

The motion was agreed to.

COMMITTEE OF THE WHOLE RISES.

The committee of the whole then rose and the chairman reported progress.

The CHAIRMAN. If somebody will move that the commission now adjourn to meet at the call of the chair, the chair would state that it is our thought to reconvene the commission very likely on the fourteenth of December. I think that falls on a Tuesday. We can get all the printing done and get everything in shape by that time, and the members will get ample notice of the date.

ADJOURNMENT.

Mr. THORPE. Mr. Chairman: I move that the commission do now adjourn to meet at the call of the chair.

Mr. McCORMICK. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 3:45 o'clock P. M., the commission adjourned to meet at the call of the chairman.

Senate Chamber,

Tuesday, December 14, 1920.

The Commission met at 10 o'clock A. M.

The Chairman, William I. Schaffer, in the chair.

The CHAIRMAN. The hour fixed for the meeting of the commission having arrived, the commission will be in order.

ROLL CALL.

The roll was called by the secretary and was as follows:

PRESENT—21.

Alter, Carson, Connelly, English, Fisher, Fox, Gordon, Kelly, McCormick, Miller, Munce, Pepper, Pinchot, Reed, Stevens, Sulzberger, Thorpe, Tyson, Voll, Warburton, Schaffer (Chairman).

ABSENT—4.

Cuyler, Perrine, Smith, Stackpole.

The CHAIRMAN. A quorum of the commission being present and ready for the transaction of business, the commission will proceed.

JOURNAL APPROVED.

Mrs. MILLER. Mr. Chairman: I move that the reading of the journal be dispensed with and the journal approved.

Mr. SULZBERGER. Mr. Chairman: I second the motion.

The motion was agreed to.

RESOLUTION.

Mr. FOX. Mr. Chairman: I desire to offer the following resolution and move its adoption:

The resolution was read by the secretary as follows:

Resolved, That the commission record with gratification and pleasure that two of the members of the commission have been signally honorad by the governor of the commonwealth in the appointment of Attorney General William I Schaffer to be associate justice of the supreme court of Pennsylvania, and in the appointment of Hon. George E. Alter, to be attorney general of Pennsylvania.

Resolved further, That we tended our sincere congratulations to our associates who have thus achieved added distinction, and to the people of the commonwealth as well, that these men, who have already in public service proved their fitness and worth, will continue to serve in more exalted positions.

The CHAIRMAN. The chair is embarassed and turns the chair over to Judge Sulzberger.

MR. SULZBERGER PRESIDING.

Mrs. MILLER. Mr. Chairman: I second the motion.

The motion was unanimously agreed to.

MR. SCHAFFER IN THE CHAIR.

The CHAIRMAN. Has any member of the commission anything to offer at this time? If not, unless there is objection, the suggestion of the chair is that we treat the book, the three-column book that is before all of you, as the report of the committee of the whole, and that further meetings of the committee of the whole be dispensed with and the commission proceed to final consideration and adoption of these recommendations as to the constitution. Is there any objection? The chair hears none, and that will be the procedure.

PREAMBLE AND ARTICLE I.

The commission proceeded to the consideration of the preamble and article I as adopted at the session beginning November 9, 1920.

The secretary read the preamble and article I as follows:

PREAMBLE.

We, the people of the Commonwealth of Pennsylvania, grateful to Almighty God for the blessings of civil and religious liberty, and humbly invoking his guidance, do ordain and establish this Constitution.

ARTICLE I.

DECLARATION OF RIGHTS.—LIBERTY AND FREE GOVERNMENT.

That the general, great and essential principals of liberty and free government. may be recognized and unalterably established, we declare that—

NATURAL RIGHTS OF MANKIND.

Section 1. All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

POWER OF PEOPLE.

Section 2. All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness. For the advancement of these ends they have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may think proper.

RIGHTS OF CONSCIENCE.—FREEDOM OF RELIGIOUS WORSHIP.

Section 3. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect or support any place of worship or to maintain any ministry against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience and no preference shall ever be given by law to any religious establishments or modes of worship.

NO DISQUALIFICATION FOR RELIGIOUS BELIEF.

Section 4. No person who acknowledges the being of a God and a future state of rewards and punishments shall, on account of his religious sentiments, be disqualified to hold any office or place of trust or profit under this commonwealth.

FREEDOM OF ELECTIONS.

Section 5. Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

TRIAL BY JURY.

Section 6. Trial by jury shall be as heretofore, and the right thereof remain inviolate.

FREEDOM OF THE PRESS.—LIBEL.

Section 7. The printing press shall be free to every person who may undertake to examine the proceedings of the legislature or any branch of government, and no law shall ever be made to restrain the right thereof. The free communication of thought and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty. No conviction shall be had in any prosecution for the publication of papers relating to the official conduct of officers or men in public capacity, or to any other matter proper for public investigation or information, where the fact that such publications was not maliciously or negligently made shall be established to the satisfaction of the jury; and in all indictments for libels the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

SEARCHES AND SEIZURES.

Section 8. The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.

RIGHTS OF ACCUSED IN CRIMINAL PROSECUTIONS.

Section 9. In all criminal prosecutions the accused hath a right to be heard by himself and his counsel, to demand the nature and cause of the accusation against him, to meet the witnesses face to face, to have compulsory process for obtaining witnesses in his favor, and, in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; he cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty or property, unless by the judgment of his peers or the law of the land.

CRIMINAL INFORMATION.—TWICE IN JEOPARDY.—EMINENT DOMAIN.

Section 10. No person shall, for any indictable offense, be proceeded against criminally by information, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger, or by leave of the court for oppression or misdemeanor in office. No person shall, for the same offense, be twice put in jeopardy of life or limb; nor shall private property be taken or applied to public use, without authority of law and without just compensation being first made or secured.

COURTS TO BE OPEN.—SUITS AGANST COMMONWEALTH.

Section 11. All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay. Suits may be brought against the commonwealth in such manner, and in such courts and in such cases as the legislature may by law direct.

POWER OF SUSPENDING LAWS.

Section 12. No power of suspending laws shall be exercised unless by the legislature or by its authority.

BAIL.—FINES.—PUNISHMENTS.

Section 13. Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

PRISONERS TO BE BAILABLE.—HABEAS CORPUS.

Section 14. All prisoners shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless when in rebellion or invasion the public safety may require it.

OYER AND TERMINER.

Section 15. No commission of oyer and terminer or jail delivery shall be issued.

INSOLVENT DEBTORS.

Section 16. The person of a debtor, where there is not strong presumtion or fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditors in such manner as shall be prescribed by law.

EX POST FACTO LAWS.—IMPAIRMENT OF CONTRACTS.

Section 17. No ex post facto law, nor any law impairing the obligation of contracts, or making irrevocable any grant of special privileges or immunities, shall be passed.

ATTAINDER.

Section 18. No person shall be attained of treason or felony by the legislature.

ATTAINDER LIMITED.—ESTATES OF SUICIDES.—DEODANDS.

Section 19. No attainder shall work corruption of blood, nor except during the life of the offender, forfeiture of estate to the commonwealth. The estate of such persons as shall destroy their own lives shall descend or vest as in cases of natural death, and if any person shall be killed by casualty there shall be no forfeiture by reason thereof.

RIGHT OF PETITION.

Section 20. The citizens have a right in a peacable manner to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances or other proper purposes, by petition, address or remonstrance.

RIGHT TO BEAR ARMS.

1 Section 21. The right of the citizens to bear arms in defense of themselves
2 and the state shall not be questioned.

STANDING ARMY.—MILITARY POWER SUBORDINATE TO CIVIL.

1 Section 22. No standing army shall, in time of peace, be kept up without the
2 consent of the legislature, and the military shall in all cases and at all times
3 be in strict subordination to the civil power.

QUARTERING OF TROOPS.

1 Section 23. No soldier shall in time of peace be quartered in any house with-
2 out the consent of the owner, nor in time of war but in a manner to be pre-
3 scribed by law.

TITLES.—OFFICERS.

1 Section 24. The legislature shall not grant any title of nobility or hereditary
2 distinction, nor create any office the appointment to which shall be for a longer
3 term than during good behavior.

EMIGRATION.

1 Section 25. Emigration from the state shall not be prohibited.

RESERVATION OF POWERS IN PEOPLE.

1 Section 26. To guard against transgressions of the high powers which we
2 have delegated, we declare that everything in this article is excepted out of the
3 general powers of government and shall forever remain inviolate.

On the question,

Will the commission agree to the preamble and article I as read?

Mr. REED. Mr. Chairman: I move that the Bill of Rights as it exists in the present constitution be adopted without change and be finally recommended by the commission.

Mr. FISHER. I second the motion.

The motion was agreed to.

MOTION TO ADOPT SECTIONS UNCHANGED.

Mr. ENGLISH. Mr. Chairman: I move that all sections which are substantially the same as those in the present constitution, the changes being only in style, be finally adopted. In that connection, if I may, I would like to call your attention to the sections which are substantially the same as those in the present constitution.

The CHAIRMAN. The chair would suggest, in the interest of saving time, that Mr. English will slowly read the sections so that we can all turn to the articles as he reads them and see whether we have any suggestions to make as to their alteration in any way.

Mr. SULZBERGER. Mr. Chairman: If I may be permitted to suggest, would it not save time to go along in the manner we have started, and take the next portion of the report, and if there is no objecion to it, pass it, and so on? Then we will get to the close in very short order. I think we will save time.

The CHAIRMAN. What is Mr. English's thought as to that? I would suggest that Mr. English, hold the floor and move the adoption of these sections, section by section, and we will proceed, I think, with celerity.

Mr. SULZBERGER. Mr. Chairman: He might move the whole article.

Mr. ENGLISH. It seems to me, Mr. Chairman, that there is no article after article I which can be adopted in its entirety under this motion, because in each article there is at least one change of substance that would have to be passed on separately by the commission.

The CHAIRMAN. Then suppose, Mr. English, that you call the sections by article, taking article II first.

Mr. ENGLISH. Exactly so, sir. I have a memorandum which shows the sections in article II which do not contain any change in substance, and possibly if I should move the adoption of these specific sections it might serve the purpose of Judge Sulzberger.

ARTICLE II, SECTIONS 1, 1-A, 1-B, 1-C, 2, 2-A, 2-B, 4-A, 4-B, 9, 12, 13 AND 14.

The commission proceeded to the consideration of sections 1, 1-A, 1-B, 1-C, 2, 2-A, 2-B, 4-A, 4-B, 9, 12, 13 and 14 of article II.

The secretary read the sections as follows:

LEGISLATIVE POWER.

1 Section 1. The legislative power of the commonwealth shall be vested in a
2 general assembly which shall consist of a senate and a house of representatives.

LEGISLATIVE APPORTIONMENT.

1 Section 1-A. At the first session of the general assembly after this constitu-
2 tion becomes effective and at the first session of the general assembly after each
3 United States decennial census, the state shall be divided by law into senatorial
4 and representative districts.

SENATORIAL DISTRICTS.

1 Section 1-B. The state shall be divided into fifty senatorial districts of com-
2 pact and contiguous territory as nearly equal in population as may be, and each
3 district shall be entitled to elect one senator. The senatorial ratio shall be
4 obtained by dividing the whole population of the state, as ascertained by the
5 most recent United States decennial census, by the number fifty. Each county
6 containing one or more ratios of population shall be entitled to one senator for
7 each ratio, and to an additional senator for an excess of population exceeding
8 three-fifths of a ratio. No county shall form a separate district unless it shall
9 contain four-fifths of a ratio, except where the adjoining counties are each en-
10 titled to one or more senators when such county may be assigned a senator or
11 less than four-fifths and exceeding one-half of a ratio. No county shall be divided
12 unless entitled to two or more senators. No city or county shall be entitled to
13 separate representation exceeding one-sixth of the whole number of senators.
14 No ward, borough or township shall be divided in the formation of a district.

REPRESENTATIVE DISTRICTS.

1 Section 1-C. The members of the house of representatives shall be apportioned
2 among the several counties, on a ratio obtained by dividing the population of the
3 state as ascertained by the most recent United States decennial census by the
4 number two hundred. A county containing less than five ratios shall have one
5 representative for each full ratio, and an additional representative when the
6 excess exceeds half a ratio; but each county shall have at least one representa-
7 tive. A county containing five ratios or more shall have one representative for
8 each full ratio. A city containing a population equal to a ratio shall elect
9 separately its proportion of the representatives allotted to the county in which
10 it is located. A city entitled to more than four representatives and a county
11 having over one hundred thousand inhabitants shall be divided into districts of
12 compact and contiguous territory. A district shall elect its proportion of repre-
13 sentatives according to its population, but no district shall elect more than four
14 representatives.

ELECTION OF MEMBERS.—TERMS.

1 Section 2. Members of the general assembly shall be chosen at the general
2 election. Their terms of service shall begin on the first day of December after
3 their election. Senators shall serve four years and representatives for two
4 years. When a vacancy shall occur in either house, the presiding officer thereof
5 shall issue a writ of election to fill such vacancy for the remainder of the term.

COMPENSATION OF MEMBERS.

1 Section 2-A. The members of the general assembly shall receive salary and
2 mileage for regular and special sessions as prescribed by law and no other com-
3 pensation, whether for services upon committee or otherwise. No member of the
4 general assembly shall, during the term for which he has been elected, receive an
5 increase of salary or mileage allowance under a law passed during such term.

PRIVILEGES OF MEMBERS.

1 Section 2-B. A member of the general assembly shall be privileged from arrest
2 during attendance of the sessions thereof and in going to and returning from the
3 same, except in cases of treason, felony, violation of his oath of office and breach
4 or surety of the peace. For a speech or debate in the general assembly he shall
5 not be questioned in any other place.

QUORUM.

1 Section 4-A. In each house a majority of the members shall constitute a
2 quorum. A smaller number may adjourn from day to day and compel the
3 attendance of absent members.

POWERS OF EACH HOUSE.

1 Section 4-B. Each house shall have power to make its rules of procedure, to
2 judge of the election and qualifications of its members, to punish for contempt
3 or disorderly behavior in its presence, to enforce obedience to its processes, to
4 protect its members against violence, offers of bribes or private solicitation, and
5 by a vote of two-thirds of the members, to expel a member, but not a second
6 time for the same cause, and shall have all other powers necessary for the legis-
7 lature of a free commonwealth. A member expelled for corruption shall not
8 thereafter be eligible to either house. Punishment for contempt or disorderly
9 behavior shall not bar an indictment for the same offense.

CHOICE OF OFFICERS.

1 Section 9. The senate shall, at the beginning and close of each regular session
2 and at other necessary times, elect one of its members as president pro tempore.
3 The house of representatives shall elect one of its members as speaker. Each
4 house shall choose its other officers.

JOURNALS.

1 Section 12. Each house shall keep a journal of its proceedings, and shall
2 publish so much thereof as shall not require secrecy. At the request of two
3 members, the yeas and nays on a question shall be entered on the journal.

SESSIONS TO BE OPEN.

1 Section 13. The sessions of each house and of committees of the whole shall
2 be open unless the business ought to be kept secret.

ADJOURNMENT.

1 Section 14. Neither house shall, without the consent of the other, adjourn
2 for more than three days, or to a place other than that in which the two houses
3 shall be sitting.

On the question,

Will the commission agree to the section?

Mr. ENGLISH. Mr. Chairman: I move the adoption of the sections as read.

Mr. SULZBERGER. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE II, SECTION 1-D.

The commission proceeded to the consideration of section 1-D of article II.

The secretary read the section as follows:

QUALIFICATIONS OF MEMBERS.

1 Section 1-D. A senator shall be at least twenty-five years of age and a repre-
2 sentative shall be at least twenty-one years of age. Each shall have been a citi-
3 zen of the commonwealth and a resident of the state for four years and a resident
4 of his district for one year next before his election, unless absent on the public
5 business of the United States, of the state government or of a municipality of
6 the commonwealth. He shall reside in his district during his term of service.

On the question,

Will the commission agree to the section?

Mr. ENGLISH. Mr. Chairman: I move the adoption of this section.

Mr. SULZBERGER. Mr. Chairman: I second the motion.

The motion was agreed to.

REQUEST FOR INFORMATION.

Mr. CARSON. Do I understand, sir, that all the numbers on page 58, which seems to be improperly headed, both as to the number of the article and the capital word, which indicates the character of the article have been transferred from article II to article XIII? Last night I looked at this page, page 58, and saw it reads "Article X, Education," and I could not find anything that refers to education there.

The CHAIRMAN. It is a misprint, Mr. Carson.

Mr. CARSON. It is a misprint; then I am correct in that.

The CHAIRMAN. Yes, sir.

Mr. CARSON. I understand that this section, which relates to the form of official oath to members of the general assembly, which also extends in terms to the offices of the state government, has been removed, so to speak, from article II and transferred to article XII, relating to public service. Am I correct in that sir?

The CHAIRMAN. It is a matter of classification. The secretary informs me it was put in article XII as being a better classification.

Mr. CARSON. So that there is no hiatus then in article II as to the oath that the members of the legislature shall take.

The CHAIRMAN. No, sir; it is a general oath.

ARTICLE II, SECTION 4.

The commission proceeded to the consideration of section 4 of article II. The secretary read the section as follows:

TIMES OF SESSIONS.

1 Section 4. The general assembly shall meet at twelve o'clock noon, on the
2 first Tuesday of January in each odd-numbered year and at other times when
3 convened by the governor. It shall hold no adjourned annual session.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE II, SECTION 9-A.

The commission proceeded to the consideration of section 9-A of article II.

The secretary read the section as follows:

OFFICERS AND EMPLOYES.

1 Section 9-A. The officers and employes of each house shall have active duties
2 and shall be selected and compensated in pursuance of laws prescribing their
3 number, duties and compensation.

On the question,
Will the commission agree to the section?
It was agreed to.

ARTICLE III, SECTIONS 1, 1-B, 5, 5-E, 6, 18, 26, 26-E, 26-F, 26-H AND 26-J.

The commission proceeded to the consideration of sections 1, 1-B, 5, 5-E, 6, 18, 26, 26-E, 26-F, 26-H and 26-J.
The secretary read the sections as follows:

HOW GENERAL ASSEMBLY MAY ACT.

1 Section 1. Laws shall be enacted by bill only.

BILLS FOR RAISING REVENUE.

1 Section 1-B. Bills for raising revenue shall originate in the house of repre-
2 sentatives. The senate may propose amendments.

AMENDMENTS AND CONFERENCE COMMITTEE.

1 Section 5. An amendment to a bill shall be printed for the use of the members
2 before the final vote is taken on the bill. An amendment by one house shall be
3 concurred in by the other and a report of a committee of conference shall be
4 adopted by either house only by the vote of a majority of the members taken by
5 yeas and nays. The names of the members voting for and of those voting against
6 such amendment or report shall be entered on the journal. A bill shall not be
7 so altered or amended on its passage through either house as to change its
8 original purpose.

SIGNING OF BILLS BY PRESIDING OFFICERS.

1 Section 5-E. The presiding officer of each house shall, in the presence of the
2 house over which he presides, sign bills and joint resolutions passed by the
3 general assembly, after their titles have been publicly read immediately before
4 signing. The fact of signing shall be entered on the journal.

FORM OF AMENDING, REVIVING OR EXTENDING LAWS.

1 Section 6. A law amending, reviving or extending a law or conferring the
2 provisions thereof shall set forth in full the part of the law affected, and an
3 amending law shall also set forth in full the part of the law affected as amended.

APPROPRIATIONS TO DENOMINATIONAL INSTITUTIONS.

1 Section 18. No appropriations shall be made for charitable, educational or
2 benevolent purposes to any denominational or sectarian institution, corporation
3 or association.

APPROVAL AND VETO BY GOVERNOR.

1 Section 26. Every order, resolution or vote to which the concurrence of both
2 houses shall be necessary, except on the question of adjournment or of agreement
3 to an amendment to this constitution shall if passed by the general assembly be
4 presented to the governor. If he approves it, he shall sign it and it shall then
5 become a law. If he shall not approve it, he shall return it with his objections
6 to the house in which it originated, which house shall enter the objections at
7 large upon its journal. If, after reconsideration, two-thirds of the members
8 elected to that house shall agree to pass the bill, it shall be sent with the gover-
9 nor's objections to the other house and if approved by two-thirds of the members
10 elected to that house shall become law. The votes of each house shall be taken
11 by yeas and nays and the names of the members voting for and of those voting
12 against the bill shall be entered on the journal.
13 If a bill shall not be returned by the governor within ten days after it has
14 been presented to him, it shall become law unless the general assembly by its

15 adjournment prevents its return. In case of such adjournment the bill shall
16 become law unless within thirty days after adjournment the governor shall file
17 it with his objections in the office of the secretary of the commonwealth and
18 shall give notice thereof by public proclamation.

DAMAGES FOR INJURIES.

1 Section 26-E. Laws may be enacted requiring the payment by employers, or
2 by employers and employes jointly, of reasonable compensation for injuries to
3 employes arising in the course of their employment and for occupational diseases
4 of employes, whether or not such injuries or diseases result in death and regard-
5 less of fault of employer or employe, fixing the basis of ascertainment of such
6 compensation and its maximum and minimum limits, and providing special or
7 general remedies for the collection thereof. In no other case shall any limit be
8 set by law upon the amount to be recovered for injuries to persons or property.
9 In case of death from injuries, the right of action thereof shall survive and
10 shall be exercised by such persons as shall be designated by law.

REGISTRATION OF LAND TITLES.

1 Section 26-F. Laws may be enacted providing that the state government or
2 the counties may register, transfer, insure or guarantee titles to lands, and pro-
3 viding for the determination of interest in such lands and for the creation of
4 indemnity funds. For such purposes new courts may be established and judicial
5 powers may be conferred upon officers of the state government or of the counties
6 subject to the right of appeal by the parties interested to the courts.

MILITA.

1 Section 26-H. Laws shall be enacted to provide for the arming, organization
2 and discipline of the freemen of the commonwealth for its defense. Persons
3 having conscientious scruples against bearing arms may be excempted by law
4 from military service.

BILLS IN SPECIAL SESSIONS.

1 Section 26-J. At a special session, there shall be no legislation upon subjects
2 other than those designated in the proclamation of the governor calling such
3 session.

On the question,

Will the commission agree to the sections?

Mr. ENGLISH. Mr. Chairman: I move the adoption of the sections as read.

Mr. CARSON. Mr. Chairman: I second the motion.

On the question,

Will the commission agree to the motion?

Mr. McCORMICK. I understand that these are not changes in substance; they are changes simply in phraseology.

The CHAIRMAN. That is correct.

Mr. THORPE. Mr. Chairman: May I ask for information? In section 26-H the word "freemen" appears. Is it commonly understood what that word means? It says "arming, organization and discipline of the freemen of the commonwealth," and since suffrage was extended to women I was going to ask whether that word included both sexes.

Mr. ALTER. Of course it does.

Mr. THORPE. I just asked that question as a matter of information.

Mr. ALTER. But as to the discipline I do not think that applies.

The CHAIRMAN. Is there any suggestion of a change in that word? The chair hears none.

Mr. FISHER. There seems to be some substantial change in this section. The old section provides that the general assembly shall provide for maintaining the militia by appropriation from the treas-

ury of the commonwealth, but the new section makes no reference to the maintenance of the militia. May I inquire why this omission?

Mr. ENGLISH. In order to expedite matters, I withdraw my motion with reference to 26-H, so that that may be separately considered.

On the question recurring,

Will the commission agree to the sections as read?

They were agreed to.

ARTICLE III, SECTION 2.

The commission proceeded to the consideration of section 2 of article III.

The secretary read the section as follows:

PRINTING AND REFERENCE OF BILLS.

1 Section 2. Before consideration, a bill shall be referred to a committee,
2 returned therefrom, and printed for the use of the members.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE III, SECTION 2-A.

The commission proceeded to the consideration of section 2-A of article III.

The secretary read the section as follows:

MEMBER INTERESTED IN BILL NOT TO VOTE.

1 Section 2-A. A member of the general assembly who has a private interest
2 in a measure or bill shall disclose the fact to the house of which he is a member,
3 and shall note vote thereon.

On the question,

Will the commission agree to the section?

Mr. FISHER. Mr. Chairman: There is a misprint in that, and I presume it will be corrected by the proofreaders. The last line contains the word "note" and it is evidently intended to be "not."

The CHAIRMAN. The correction will be noted by the secretary.

On the question recurring,

Will the commission agree to the section.

It was agreed to.

ARTICLE III, SECTION 5-C.

The commission proceeded to the consideration of section 5-C of article III.

The secretary read the section as follows:

NOTICE OF LOCAL OR SPECIAL BILLS.

1 Section 5-C. At least thirty days before the introduction of a local or
2 special bill, notice of the intention to introduce the same shall be published in
3 the locality where the matter or thing to be affected shall be situated. No such
4 bill shall be finally acted on by either house until the evidence of such notice hav-
5 ing been published has been exhibited therein. Notice shall not be required of
6 the intention to introduce a general bill for the repeal of a local or special law.

On the question,
Will the commission agree to the section?
It was agreed to.

ARTICLE III, SECTION 5-D.

The commission proceeded to the consideration of section 5-D of article III.

The secretary read the section as follows:

FINIAL PASSAGE OF BILLS.

1 Section 5-D. Before a bill shall be passed, it shall be read at length on three
2 different days in each house; on its final passage the vote shall be taken by
3 yeas and nays; the names of the members voting for and of those voting against
4 shall be entered on the journals and a majority of the members elected to each
5 house shall be recorded thereon as voting in its favor.

On the question,
Will the commission agree to the section?
It was agreed to.

ARTICLE III, SECTION 5-F.

The commission proceeded to the consideration of section 5-F of article III.

The secretary read the section as follows:

FORM OF LAWS.

1 Section 5-F. A law shall contain only one subject. A general appropration
2 law, a codification, and a compilation or general revision of statutory law shall
3 be deemed to contain only one subject.

On the question,
Will the commission agree to the section?
It was agreed to.

ARTICLE III, SECTION 5-G.

The commission proceeded to the consideration of section 5-G of article III.

The secretary read the section as follows:

TITLE OF LAWS.

1 Section 5-G. The subject of a law shall be clearly expressed in its title. A
2 law may in the body thereof set forth a short title by which it may be cited.
3 A law amending, reviving or extending a law shall set forth in its title the title
4 or the short title of the law affected.

On the question,
Will the commission agree to the section?

Mr. FISHER. Mr. Chairman: I think that there is quite a material change in substance made in this section. The old section provided that the subject should be clearly expressed in the title and should contain only one legislative subject. The idea of containing only one legislative subject is stricken out of the new section. It reads "the subject to a law shall be clearly expressed in its title."

The CHAIRMAN. It is in the section above, Mr. Fisher.

Mr. REED. It is put into section 5-F.

Mr. FISHER. Yes, I beg your pardon; I see it.

On the question recurring,

Will the commission agree to the section?

It was agreed to.

ARTICLE III, SECTION 15.

The commission proceeded to the consideration of section 15 of article III.

The secretary read the section as follows:

BUDGET AND APPROPRIATION BILLS.

1 Section 15. The governor shall submit to the general assembly a budget on
2 or before March 1 of each year in which it shall be in regular session. The
3 budget shall contain a complete plan of proposed appropriations and complete
4 estimates of the revenues and funds available for appropriation for the two ensu-
5 ing fiscal years, including appropriations for charitable, education and benevo-
6 lent purposes. In submitting proposals for appropriations to charitable, educa-
7 tional or benevolent institutions not under the absolute control of the common-
8 wealth, the governor shall at the same time submit a plan of distribution among
9 the classes of institutions to be benefited.
10 When the govenor presents the budget to the house of representatives, he
11 shall submit a general appropriation bill containing the proposed appropriations
12 for the fiscal years covered by the budget and may also submit any bill embodying
13 recommendations as to sources of revenue.
14 The presiding officer of the house of representatives shall immediately cause
15 such bills to be introduced.
15 The general assembly may increase, decrease, strike out or otherwise alter
17 any item in the general appropriation bill, or may add new items thereto.
18 Until the general appropriation law has been enacted neither house shall con-
19 sider an appropriation bill other than the general appropriation bill unless the
20 appropriation shall be solely for the immediate needs of the general assembly or
21 unless the governor shall request the general assembly to act upon the bill in
22 advance of the general appropriation bill.
23 After the general appropriation law has been enacted, no appropriation shall
24 be made for any purpose, object or item included therein or in the general
25 appropriation bill as submitted by the governor, unless the governor shall request
26 the general assembly to pass a bill making such appropriation.
27 The general assembly shall not finally adjourn for ten days after the general
28 appropriation bill has been presented to the governor.

On the question,

Will the commission agree to the section?

Mr. FISHER. Mr. Chairman: May I call attention to the closing sentence of the first paragraph of section 15, which provides that "In submitting proposals for appropriations to charitable, educational or benevolent institutions not under the absolute control of the commonwealth, the governor shall at the same time submit a plan of distribution among the classes of institutions to be benefited"? This seems to conflict somewhat with the second clause of section 17. It seems to me that this provision here is superfluous.

Mr. McCORMICK. Mr. Chairman: I made that amendment, or rather proposed that amendment at the last meeting of the commission because I thought it was of great importance that the governor in his budget should give an additional opportunity for the people of the state to study the plan of distribution for these charitable institutions. It could do no harm, and it might be of very great benefit, because the governor with his experts, really must take the responsibility of studying out the needs of these various institutions through the state board of charities or some other agency, and he, in my opinion, would be the proper person to suggest to the legislature a proper plan of distribution. It gives greater publicity. It would require him to make a much more careful study of the entire

situation through his expert agencies than the legislature could possibly give it, and therefore I simply tried to emphasize that one feature, and had it inserted in the budget plan. It does not interfere with the action of the legislature in adopting any uniform plan later. They are required to do that also.

Mr. FISHER The clause here requires the governor to submit this plan, but over in section 17, in direct conflict with that, there is a provision that such plan shall be presented by law or by an agency created by law. Now, there are two agencies required to do exactly the same work. I call attention to the inconsistency. I think that there ought to be a definite plan. The question is whether or not the governor shall do it, or this agency which may be created by law.

Mr. SULZBERGER. The governor does not prescribe it, he only suggests.

Mr. McCORMICK. I was going to ask if the legislature could not adopt the governor's plan. We have given the legislature complete control over the budget system, and in any event the governor simply suggests a plan; but they can refuse it, cut it down or change it as they please. I would like to have the constitution require that the governor give this careful study and that he submit a final plan of distribution after consultation with his experts.

Mr. ENGLISH. Mr. Chairman: May I ask whether it is not Mr. McCormick's intention that the governor, at the time the budget is submitted, should designate the beneficiaries of these appropriations rather than submit a plan which might embrace rules governing the distribution of appropriations of this kind among charitable institutions? Possibly if a slight change were made in this section 15 it might be entirely harmonized with section 17.

Mr. McCORMICK. Mr. Chairman: The whole theory of this budget situation in the amendment of section 17, as I understand it, is to wipe out the evils that exist in the methods that have been used in the past, and to change that they propose to prevent the appropriation to special institutions and create classes. It is in the creation of those classes that some plan must be made and devised, and it would seem to me to be of great value to have the governor submit such a plan, but also to make it obligatory that the legislature in any appropriation that is made must also have a plan. I would like to have the governor make the only plan and not give the legislature the power to change it, but it was thought otherwise by the commission. I do not believe it is best to give them that power, and therefore I would leave the government to submit a plan. Now, if this phraseology is wrong or there is any inconsistency, why it can be changed, but I hope the principle will remain.

Mr. FISHER. Mr. Chairman: I am not opposed to the principle at all. The fact is, I am heartily in favor of it. I am so much in favor of it that I want to enforce it. I do not want to have two arms of the government conflict in doing the same work. It should only be vested by giving power to the governor to determine the classification, with the power in the legislature to modify, increase, decrease or strike out items. In the seventeenth section however, we say clearly that an agency of the law shall do the same work that we here say the governor shall do. Now, there ought to be a harmonizing of these provisions, because it will lead to confusion in interpretation. I do not care much which way it is adopted myself.

Mr. McCORMICK. Mr. Chairman: Could we postpone action on this part of it, on this question, and let Senator Fisher and myself see at the recess hour or before we adjourn whether we can work out some amendment that would cover the stuation?

Mr. FISHER. There is no division on the object to be accomplished. It is only as to the means by which it shall be done.

Mr. McCORMICK. If we strike out the provision in article 17 and simply leave in the budget plan, then you are requiring the governor to make a plan, but you will give the legislature power to change any plan which they may see fit. What you are doing is to strike out, as I understand it, a plan of distribution, a uniform plan of distribution, and that is what I do not want. You have got two agencies all through the section. You submit a plan to the legislature and then tell the legislature that they can tear it to pieces and not accept any of it. I am doing simply with this what you are doing with the other features.

The CHAIRMAN. The chair does not understand that there is a conflict between these two sections. The chair understands in reading that section that the governor submits a plan and the legislature is to carry out the plan by a law or by an agency created by law. That is the way the chair understands it. It may not be the correct understanding, and if it is desired to give further thought to this provision the chair will entertain a motion for its postponement.

On the question recurring,

Will the commission agree to the section?

SECTION POSTPONED.

Mr. McCORMICK. Mr. Chairman: I move that further consideration of this section be postponed for the present.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE III, SECTION 17.

The commission proceeded to the consideration of section 17 of article III.

The secretary read the section as follows:

APPROPRIATIONS TO CHARITABLE AND EDUCATIONAL INSTITUTIONS.

1 Section 17. An appropriation for charitable, education or benevolent pur-
2 poses may be made to a class of corporations, associations or institutions not
3 under the absolute control of the commonwealth, engaged in work or service for
4 the public good, as such classes may be defined by law. Such work or service
5 shall conform to standards of excellence prescribed by law or by an agency
6 created by law.
7 An appropriation to such a class shall be divided among its members in
8 accordance with a plan uniform in its application to them. Such plan shall be
9 prescribed by law or by agency created by law. No law shall designate such
10 a corporation, association or institution as the beneficiary of an appropriation.
11 Each item containing such an appropriation shall be voted on separately in
12 each house before final action is taken upon the bill of which it is part and
13 shall be stricken from the bill unless it shall receive the support of two-thirds
14 of the members elected. The votes of each house shall be taken by yeas and
15 nays and the names of the members voting for and of those voting against the
16 item shall be entered on the journal.

17 Corporations, associations and institutions receiving such appropriations
18 shall account therefor to the general assembly or to an agency prescribed by law
19 and shall be subject to inspection by the state government.

On the question,

Will the commission agree to the section?

SECTION POSTPONED.

The CHAIRMAN. As this is involved in the same question, unless there is objection, this section will take the same course as the preceding one.

ARTICLE III, SECTION 18-A.

The commission proceeded to the consideration of section 18-A of article III.

The secretary read the section as follows:

CERTAIN APPROPRIATIONS PERMITTED.

1 Section 18-A. Appropriations may be made for the payment of pensions and
2 gratuities for military services; for the payment of pensions for the retirement
3 of classes of officers and employes of the state government and school districts;
4 for the relief of persons or municipalities injured or damaged by surface sub-
5 sidence resulting from past or future mining of anthracite coal; for relief con-
6 sequent upon grave public disasters or calamities; for the payment of funds
7 under public control for the benefit of classes of persons who are to be the
8 recipients of public assistance; and for the payment of the debts of munici-
9 palities contracted to enable the commonwealth to repel invasion, suppress
10 domestic insurrection or defend itself in time of war.

On the question,

Will the commission agree to the section?

Mr. THORPE. Mr. Chairman: In section 18-A I see the use of the word "future" in the fifth line, and in reading this over and reflecting I do not quite understand how you are going to appropriate for the remedy of "future" damage, "future" injuries. It looks a little curious on reading. "Future mining," the use of the word "future" there. I ask for information on that point, whether it is perfectly understandable all around.

Mr. FISHER. The word was inserted there because as originally submitted this proposal covers only injuries within the statute of limitation, and it was thought that it was unfair to those whose property had been undermined in years extending back beyond the period of limitation, and that it should be broad enough to cover injuries which may result in future mining. It may not be a happy phrase, but that was the thought.

Mr. THORPE. If that is true, what is the use of using the word "past" or "future" at all?

Mr. SULZBERGER. Would not the thought of the situation be met if you use the word "past," which excludes by implication the word "future"?

Mr. THORPE. It may be if you do not use it at all.

Mr. SULZBERGER. If you use merely "past," what becomes of the "future"? If you say nothing, if you only say mining, then you are met with the statute of limitations, and you want to overcome that, or it is believed this will overcome that. I am not at all sure that it does cover it.

Mr. KELLY. Mr. Chairman: I think it would be well to leave the words as they are, "past or future." Mining, of course, will be

carried on in the future as it has been in the past, and in the mining of coal there may be in the future, in the regular course of mining, subsidences to streets and other municipal improvements as well as to private improvements. It might be if you cut out both "past" and "future," it might cover the situation, but the matter was debated, considered and thought over considerably by the committee on style and other persons interested in the subject, and I think it has a tendency to clarify it by leaving the words in there. Not only from past mining, as I said here before, the injury may be done next year from some mining that happened last year, or ten years ago, more or less; and an injury may happen next year from coal which shall be mined next year, between now and the time of injury. It seems to me that it may have a tendency to clarify and make plain. That is the thought that was in the mind of the commission.

Mr. CARSON. Mr. Chairman: During the visit that I paid to Scranton with the Commission in October for the purpose of ascertaining from actual contact with the situation what the dangers might be, I was impressed by two distinct circumstances which bear somewhat on the use of these words "past" and "future." I recall that one of the most serious subsidences that I looked at in the way of a sinking of the surface of the street and the opening of a hole occurred in the immediate neighborhood, if not in the actual pavement of that residential district where the late Judge Willard and his son-in-law, Mr. Warren, had resided. I was told that here was a most recent illustration of the yawning of a chasm, as there had been no mining operation there for sixty years. What happened there was the result of some improvidence, or else the lack of knowledge in the methods of mining which had occurred more than a half a century ago. Well now, I am convinced that there is a possibility of some reason for the distinction in this article for relief although the cause may date back considerably into the last century. So much for the use of the words "past mining." Now, with regard to the future, I was impressed by this fact. I was told that one of those coal companies, I forget what its name was, I think it was the Peoples, which seems to be a strange name to attach to a corporation which, instead of acting in the interest of the people was actually acting defiantly in its own interest and asserting that, "No matter what injuries might take place, we are going to take the coal out, whether it was under a street or under a building or under a public hall, or wherever it was;" but they were going to have the coal. If such be the situation, and if the wealth in the ground, as it is said to be, is greater than all the buildings at the present time on the top of the ground, then we are going to have, no matter how careful the method of mining may be, cause for applications to the state for relief under this very article. I feel with Judge Kelly that the use of these two words might be very properly retained in order to guard against difficulties of that kind. You cannot tell what the cause may be of a present chasm that arises and you can not tell where the next subsidence will take place. I think I would let it alone.

Mr. THORPE. I do not want to detain the commission. Just one thing. I am thinking of what the critic would say, Mr. Chairman, when you make an appropriation for subsidence resulting from a future calamity. Now, suppose the critic or somebody else—

Mr. CARSON. This is only a reservoir of power. The legislature will have to take care of it.

Mr. THORPE. I thoroughly agree with what you just said.

Mr. CARSON. This is not the legislature; the legislature will make the appropriation.

On the question recurring,

Will the commission agree to the section?

It was agreed to.

ARTICLE III, SECTION 18-B.

The commission proceeded to the consideration of section 18-B of article III.

The secretary read the section as follows:

GRATUITIES AND EXTRA COMPENSATION FORBIDDEN.

1 Section 18-B. Except as in this constitution expressly provided, no appropria-
2 tion shall be made by the state government for charitable, benevolent or educa-
3 tional purposes to any person or community, and no law shall authorize a gratu-
4 ity by the state government, give extra compensation after services have been
5 rendered or contract made, or appropriate money to pay a claim against the
6 commonwealth without previous authority of law.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE III, SECTION 26-A.

The commission proceeded to the consideration of section 26-A of article III.

The secretary read the section as follows:

1 Section 26-A. The governor may indicate his approval or disapproval of an
2 appropriation bill by signing or vetoing it as in the case of other bills. If he
3 shall approve one or more items and shall disapprove or desire to reduce one
3 or more other items, he shall return the bill to the house in which it originated
4 setting forth his reasons. The items which he approves shall become law. The
5 items which he disapproves or desires to reduce may be passed over his objec-
6 tions by separate action on each item in the manner prescribed for the passage
7 of bills over his veto. Such items not passed over his objections shall, in
8 accordance with his recommendation, be stricken from the bill or shall become
9 law as reduced by him.

On the question,

Will the commission agree to the section?

Mr. FISHER. Mr. Chairman: Just in the interest of language, I move that in line three the words "or desire to" be stricken out. As it stands here it reads that the governor shall "approve one or more items and shall disapprove or desire to reduce one or more items." Now, it is not the desire of the governor, it is the action of the governor, which we want to express. These words are superfluous and misleading, and I move to amend by striking them out.

Mr. THORPE. Mr. Chairman: I second the amendment.

On the question,

Will the commission agree to the amendment?

Mr. SULZBERGER. Mr. Chairman: I am afraid Senator Fisher is a little too strong in his interpretation of the language. The governor can not reduce one item, he can not go beyond the desire to reduce, which desire he communicates to the legislature, and it is the legislature that reduces; and that is the reason, I presume, that the committee on style kept the words "desire to."

Mr. ALTER. Mr. Chairman: I think the language is better as it is, because the governor has not the power to reduce. He simply desires to reduce it and communicates that to the legislature, and then they either agree with him or override his judgment.

Mr. FISHER. So that if he makes an absolute veto, then he simply expresses his desire to veto it? That construction does not harmonize with the language used in this section.

Mr. ALTER. He disapproves.

Mr. FISHER. He may veto an item and thereby act directly upon it. He may reduce an item and so act directly upon it. That is an executive act. He does not express the desire to veto or cut out or reduce or enlarge. This is executive action and ought to be made direct, in my opinion; but the words "desire to" following later on ought to be stricken out to harmonize with the first portion of the section, if my motion carries.

Mr. REED. Mr. Chairman: I would call the attention of the distinguished gentleman to the last sentence of that section, which seems to imply that the governor actually reduces. "Such items not passed over his objections shall, in accordance with his recommendation, be stricken from the bill or shall become law as reduced by him." So it is not his desire; he actually reduces it.

Mr. SULZBERGER. I do think Senator Fisher's analysis of the word "veto" there really is correct, and I think I had better withdraw by remarks.

Mr. REED. Then you will have to change the word "reduce" to "reduces" in the fifth line. The change of the word "reduce" to "reduces" will also have to be made.

On the question recurring,

Will the commission agree to the amendments?

They were agreed to.

On the question,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE III, SECTION 26-B.

The commission proceeded to the consideration of section 26-B of article III.

The secretary read the section as follows:

DATE WHEN LAWS TAKE EFFECT.

1 Section 26-B. A law shall become effective on the first day of January after
2 its enactment unless otherwise provided therein.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE III, SECTION 26-C.

The commission proceeded to the consideration of section 26-C of article III.

The secretary read the section as follows:

LOCAL AND SPECIAL LAWS FORBIDDEN.

1 Section 26-C. No local or special law shall be enacted:
2 (a) Regulating the affairs of a municipality;
3 (b) Changing the names of persons or places;
4 (c) For the creation or regulation of highways, ferries or bridges, except
5 bridges across streams which form state boundaries;
6 (d) Regulating cemeteries or public grounds not belonging to the common-
7 wealth;
8 (e) Granting divorce or authorizing the adoption or legitimation of children;
9 (f) Regulating elections other than those relating to constitutional conven-
10 tions, except that laws regulating the registration of electors may be applied to
11 cities or boroughs of a specified class only;
12 (g) Regulating the organization of a court or the administration of justice;
13 (h) Regulating liens, the collection of debts or the effect of judicial sales of
14 real estate;
15 (i) Regulating schools;
16 (j) Fixing the rate of interest, except that laws may be enacted permitting
17 classes of associations and corporations to pay a higher rate of interest than
18 individuals;
19 (k) Regulating the estates of decedents, minors or persons under disability;
20 (l) Regulating labor, trade, mining or manufacturing;
21 (m) Creating corporations, or amending, renewing or extending their charters;
22 (n) Granting a benefit, privilege or power.
23 No local or special law shall be indirectly enacted by the partial repeal of a
24 general law. Laws repealing local or special laws may be enacted.

On the question,

Will the commission agree to the section?

Mr. REED. Mr. Chairman: I appreciate the masterly work of the committee on style in condensing this paragraph. I suppose it is too late to criticise any section, but there was an ancient worthy who hung the laws up so high on a pillar that the citizens could not read them, and he hung them anyhow. I do not know but that in this condensation we have managed to obscure a good many things that had been the subject of decisions of the supreme court for the last fifty years and well settled, but I am not going to take up time with that. I want to call your attetnion to the fact that you have, the committee has, left out, at least to my mind, the old paragraph. I think we will call it twenty-four of the old constitution, which was exempting property from taxation. That may be covered by some of these general provisions, but I think it ought to be restored specifically; otherwise you have obscured the prohibition that the legislature shall not exempt from taxation.

The CHAIRMAN. I think that clause should be restored.

Mr. REED. Yes, I think that ought to be restored myself.

Now, I would like to call your attention to clause 16 of the new draft, which in two lines undertakes to cover up all the exemptions relating to courts and justices of the peace and administration of justice, and to ask the commissioners whether they think that is specific enough. The new provision reads "No local or special law shall be enacted regulating the organization of a court or the administration of justice." Under that section it seems to me that any law relating to the supreme court or the superior court would be unconsitutional. Any law which, on the other hand—

Mr. SULZBERGER. On what page is that?

Mr. REED. On page 22, sir, clause (g).

On the other hand, it is a question whether it is not too narrow to cover all the things that are covered in the original draft, but I particularly would ask to have these words "exempting property from taxation" restored.

Mr. CARSON. What is your suggestion?

The CHAIRMAN. As the chair understands Judge Reed's motion, he moves first to insert in the section as it appears the words in the present constitution, paragraph 24, "exempting property from taxation." Am I correct in that?

Mr. REED. Yes, sir; clause twenty-four of the old constitution.

Mr. KELLY. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the commission agree to the section as amended?

Mr. FISHER. Mr. Chairman: I am not sure whether the committee in its labors fully appreciated the effect of clause (j), beginning in line sixteen, in which a special law is prohibited fixing the rate of interest, "except that laws may be enacted permitting classes of associations and corporations to pay a higher rate of interest than individuals." I assume that this exception was inspired by the desire to take care of the extraordinary times through which we are now passing. It in effect, I think, gives advantage to associations and individuals. If they are permitted to pay a higher rate of interest would it not drain away the money from those who are not in such a fortunate situation? In other words, may it not be a discrimination against individuals? Now then, it has another effect. We have in this state what is known as the small lenders' act, which was passed to estop the activities of what were known as "loan sharks." These loan sharks are familiar to the residents of the cities, and they prey upon people's necessities. The legislature undertook to deal with them, but found that they had to deal with a situation which would not permit of the adherence to the legal rate of interest. So they attempted a classification by providing that these small lenders might be licensed to make loans at a higher rate of interest that that which is now fixed by law, not to exceed three hundred dollars. Then the supreme court had a tussle with the classification question, but finally sustained the law. Now, we have knocking at the doors of our state a system of banking known as the Morris plan. It is prompted by the very best motives, but they are unable to operate under the legal rate of interest. They do not limit their loans to three hundred dollars. They have been before the legislature, and will come again. Their whole object is to relieve the necessities of the poor, but they can not do it, under the system, at six per cent. Now, this exception will operate against both licensed small lenders and the Morris plan. It seems to me that evils may flow out of this attempt to permit a discrimination in the rates of interest in favor of associations and corporations.

The CHAIRMAN. Would striking out the words "classes of associations," and confining it to corporations meet the situation so that individuals who want to pay higher rates of interest may incorporate themselves?

Mr. McCORMICK. Does not this cover your case?

The CHAIRMAN. No, sir.

Mr. McCORMICK. It excepts associations.

Mr. KELLY. It seems to me that Senator Fisher is right and that this may operate harshly. If an individual saw fit to run an industrial plant as an individual or a combination of individuals as

persons, if you please, they would be confined to a certain legal rate of interest, and if they needed capital they could get it, whereas the corporation across the street might be allowed to issue seven or eight per cent. notes or bonds, and the individuals of the co-partnership would not be able to do that. It certainly would be a calamity. I think that the legislature could be entrusted with this legislation entirely. We have never had any trouble on the question of interest except by the loan sharks, and that has been remedied, I believe, by the act to which Senator Fisher called attention. I would move to strike out clause (j) from the section.

Mr. PINCHOT. Would some member of the commission kindly explain to a layman what the purpose of the provision is? Why that thing was necessary?

Mr. REED. I guess I was partly responsible for it last May. When this was considered the rate of interest had arisen, and corporations were unable to borrow money at six per cent. The result was that they would sell their bonds at a discount, in some cases very high, or they had to go out of the state to borrow money, in New York largely, in New York where they could get it at higher rates of interest. The result was that they were discriminating against the local bankers and trust companies who could not act as fiscal agents or trustees in making the bonds payable in Pennsylvania, while it was an easy matter to go over into New York and make an issue of bonds payable to a New York trust company at any rate of interest they saw fit; and it was with the idea that corporations ought to be permitted to have the luxury of paying seven or eight or ten per cent. if they wanted to without the necessity of involving the individuals in making the legal rate higher than six per cent. Now, my own impression is that that period is almost passed, and that the rate of interest for corporate loans will gradually go down. The question more particularly will be where they can borrow at all at any rate, and I second Judge Kelly's motion to strike out the words, not the whole section, to amend by making it read, "Fixing the rate of interest," as in the old section.

On the question,

Will the commission agree to the motion?

Mr. SULZBERGER. Mr. Chairman: I do not understand what a local or special law is fixing the rate of interest. What is the meaning of local or special laws fixing the rate of interest? A law fixing the rate of interest would seem to me to be a law of the most general character.

The CHAIRMAN. That is the exact wording of the present constitution.

Mr. SULZBERGER. It is the exact wording.

On the question recurring,

Will the commission agree to the amendment?

It was agreed to.

On the question,

Will the commission agree to the section as amended?

Mr. CARSON. Mr. Chairman: I want to ask Judge Reed to explain a remark which he made, which somewhat disturbed me, about the possibility of the constitutionality of an act relating to the superior court changing a jurisdiction, regulating the organization of the court or the administration of justice. What thought have you in mind as embarassing?

Mr. REED. It says, "No local or special law shall be enacted regulating the organization of a court or the administration of justice."

Mr. CARSON. Why is not that proper?

Mr. REED. Are you going to pass a class bill for the superior court as a class? Suppose you want to pass a law adding two judges or one judge to the superior court or supreme court, is that a special law or a general law? I do not know.

Mr. CARSON. I do not know.

Mr. REED. We might ask the attorney general; he ought to know.

Mr. CARSON. Let us not embarass him; he has his labors before him. I would like to know what you want to do with it; strike it out or what?

Mr. REED. For instance, we had a court created in Allegheny county, which was special to Allegheny county; no other county wanted it. Under this sweeping provision such a thing would have been impossible, I think.

Mr. FOX. Mr. Chairman: I fully agree with Judge Reed, and I thing we ought to strike that out and substitute the provision of the present constitution. The last paragraph of this section in the old constitution has apparently been stricken out entirely.

Mr. REED. You can not strike that out, Judge Fox. When you strike that out you strike out a lot of other provisions that have been merged into it.

Mr. FOX. I mean to simply strike out clause (g).

Mr. REED. I know, but if you do that you strike out everything relating to the administration of justice.

Mr. FOX. I would substitute the last clause in the old section.

Mr. REED. But that does not cover everything.

The CHAIRMAN. Do you want to do that? If you do you ought to substitute paragraph seventeen of the present constitution.

Mr. McCORMICK. If you strike that out you have got to insert clause seventeen.

Mr. REED. If I may suggest that you strike out the words "Regulating the organization of a court," and then say "Regulating the administration of justice," and then add your provision in the old constitution.

The CHAIRMAN. The suggestion of the chair is that the further consideration of this section be postponed until after the recess, and we can, or the secretary will endeavor to, put in shape a section or paragraph that will take care of this objection.

Mr. FISHER. Mr. Chairman: While we are discussing this question, I would like to call your attention to clause (n) on line twenty-two, "No local or special law shall be enacted granting a benefit, privilege or power." Now, you can have no law that does not grant some benefit, privilege or power, and as that stands it is equivalent to saying there can be not special laws I understand that that is a general provision which was intended to include perhaps clauses twenty-three and perhaps twenty-six, twenty-seven and twenty-eight as adopted at the sessions beginning May 11th; but doesn't it go so far as to practically forbid any local law whatever?

SECTION POSTPONED.

The CHAIRMAN. Is there any objection to the postponement of consideration of this section until after recess? The chair hears no objection, and consideration will be postponed until after recess.

The chair would like to suggest in this connection that it might be well if members of the commission would give consideration as to whether there is not something in Judge Reed's suggestion to re-enact this special legislation clause as it is in the present constitution, with the omission of some few provisions that are obsolete. I just offer this as a suggestion, however.

Mr. REED. Mr. Chairman: I will just make that motion, and then ask you to postpone it until after recess.

Mr. McCORMICK. Mr. Chairman: I second the motion.

On the question,

Will the commission agree to the motion?

Mr. CARSON. I think that is a very good thought. I recall a passage in one of the late Chief Justice Mitchell's opinions, in which he was commenting on the constitution, and he used this phrase, "that the constitution of 1873 had put a barbed wire fence," that was his phrase, "a barbed wire fence around the action of the legislature." Now, in regard to this regulation of courts, the organization of courts, I do not see why if it were necessary to increase the number of justices of the supreme court or to rearrange, as we are doing in Philadelphia, our own court of common pleas, or consolidating it, or if the city of Scranton should at some future time, long before the period arrives for an amendment to the constitution, develop some special situation in which they would be particularly interested, that it should be such a terrific offense to pass a special act organizing a court for that particular purpose, to relieve that particular community. It does not endanger the rest of the state, and the denial of the power is a serious embarrassment to the locality which finds itself somehow or other in chains which it can not break. I agree that this thing ought to be pretty carefully gone over before we tie up the legislature too tightly to a narrow line of action.

The CHAIRMAN. Consideration of this section will be postponed until after recess, and the pending motion will be Judge Reed's motion to adopt the section as it is in the present constitution.

Mr. REED. Will you permit me, Mr. Chairman, if that motion is made to include several sections that have been carried into that section?

The CHAIRMAN. Judge Reed's motion is, first, to adopt, so that we will understand it, the section as it appears in the old constitution. Is that correct, Judge Reed?

Mr. REED. Yes, that is it. That is the section as it is in the present constitution.

RECONSIDERATION OF VOTE.

Mr. FISHER. Mr. Chairman: I move that the vote by which section 26-F of article III was adopted be reconsidered.

Mr. CARSON. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE III, SECTION 26-F.

The commission resumed consideration of section 26-F of article III.

The secretary read the section as follows:

REGISTRATION OF LAND TITLES.

1 Section 26-F. Laws may be enacted providing that the state government or
2 the counties may register, transfer insure or guarantee titles to lands, and pro-
3 viding for the determination of interest in such lands and for the creation of
4 indemnity funds. For such purposes new courts may be established and judicial
5 powers may be conferred upon officers of the state government or of the coun-
6 ties subject to the right of appeal by the parties interested to the courts.

On the question recurring,

Will the commission agree to the section?

Mr. FISHER. Mr. Chairman: May I call attention to this section regarding the registration of land titles? In the fourth line we used the word "new" before the word "courts," so that it reads, "For such purposes new courts may be established and judicial powers may be conferred." I move to strike out the word "new," so that it shall read, "For such purposes courts may be established and judicial powers may be conferred." The purpose of this is to obviate the necessity of setting up new courts, and to enable the legislature to utilize existing courts.

Mr. CARSON. Mr. Chairman: I second the amendment.

On the question,

Will the commission agree to the amendment?

Mr. REED. That was in the old constitution.

Mr. FISHER. Yes, it was in the old constitution.

On the question recurring,

Will the commission agree to the amendment?

It was agreed to.

On the question,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE III, SECTION 26-H.

The commission proceeded to the consideration of section 26-H of article III.

The secretary read the section as follows:

MILITIA.

1 Section 26-H. Laws shall be enacted to provide for the arming, organization
2 and discipline of the freemen of the commonwealth for its defense. Persons
3 having conscientious scruples against bearing arms may be exempted by law
4 from military service.

On the question,

Will the commission agree to the section?

Mr. FISHER. Mr. Chairman: This is the section to which I previously called attention. The idea of maintenance is omitted from the new provision, and I move to amend by inserting after "organization" the word "maintenance," so that it shall read. "Laws shall be enacted to provide for the arming, organization, maintenance and discipline of the freemen of the commonwealth for its defense."

Mr. REED. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the commission agree to the section as amended?

Mr. GORDON. Mr. Chairman: I move to strike out the word "freemen" in the second line and insert the word "citizens."

Mr. REED. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE III, SECTION 26-I.

The commission proceeded to the consideration of section 26-I of article III.

The secretary read the section as follows:

STREAMS.

1 Section 26-I. Laws shall be enacted to provide for maintaining the purity
2 of streams.

On the question,

Will the commission agree to the section?

Mr. REED. Mr. Chairman: I move that it be amended by inserting the word "general," so that it will read, "General laws shall be enacted."

Mr. FISHER. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE III, SECTION 28.

The commission proceeded to the consideration of section 28 of article III.

The secretary read the section as follows:

CHANGE OF CAPITAL.

1 Section 28. No law changing the location of the capital shall be valid unless
2 ratified by a majority of the electors of the commonwealth voting on the question.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE IV, SECTIONS 5, 5-A, 5-B, 5-D, 7, 9, 10, 11, 12-A, 18 AND 22.

The commission proceeded to the consideration of sections 5, 5-A, 5-B, 5-D, 7, 9, 10, 11, 12-A, 18 and 22 of article IV.

The secretary read the sections as follows:

QUALIFICATIONS OF GOVERNOR.

1 Section 5. The governor shall be a citizen of the United States at least
2 thirty years of age. He shall have been a resident of the state for seven years
3 next preceding his election unless absent on the public business of the United
4 States or of the state government.

ELECTION OF GOVERNOR.

Section 5-A. The governor shall be chosen by the electors of the commonwealth at the places where they shall vote for representatives. The returns of the election shall be sealed up and transmitted to the seat of government, directed to the president of the senate, who shall open and publish them in the presence of the members of both houses of the general assembly. The person having the highest number of votes shall be governor. If two or more shall have the same and the highest number of votes, one of them shall be chosen governor by the joint vote of the members of both houses.

CONTESTED ELECTION OF GOVERNOR.

Section 5-B. A contested election of a governor shall be determined by a committee selected from both houses of the general assembly and formed and regulated as prescribed by law.

The chief justice of the supreme court shall preside at the trial of such a contested election. He shall determine questions regarding the admissibility of evidence and shall, upon request of the committee, pronounce his opinion upon other questions of law.

SUPREME EXECUTIVE POWER.

Section 5-D. The supreme executive power shall be vested in the governor who shall take care that the laws be faithfully executed.

MILITARY POWER.

Section 7. The governor shall be the commander-in-chief of the army and navy of the commonwealth, and of the militia except when they shall be called into the service of the United States.

PARDONING POWER.

Section 9, The governor may remit fines and forfeitures, and may grant reprieves, commutations of sentence and pardons, except in cases of impeachment. He shall commute a sentence or grant a pardon only on the recommendation in writing of the lieutenant-governor, the secretary of the commonwealth, the attorney general and the secretary of internal affairs, or of any three of them, after full hearing, upon due public notice and in open session. Such recommendation, with the reason therefor at length, shall be recorded and filed in the office of the secretary of the commonwealth.

POWER TO REQUIRE INFORMATION.

Section 10. The governor may require information in writing from the executive officers of the state government with respect to their duties.

DUTY TO INFORM GENERAL ASSEMBLY.

Section 11. The governor shall, from time to time, give to the general assembly information of the state of the commonwealth, and shall recommend to its consideration such measures as he may judge expedient.

LIEUTENANT-GOVERNOR.

Section 12-A. The lieutenant-governor shall be chosen with the same qualifications, at the same time, in the same manner, and for the same term as the governor. He shall not be eligible to the office of lieutenant-governor for the succeeding term. A contested election of lieutenant-governor shall be conducted in the same manner as a contested election of governor. The lieutenant-governor shall be president of the senate, but shall have no vote unless the senate be equally divided.

SECRETARY OF THE COMMONWEALTH.

Section 18. The secretary of the commonwealth shall keep a record of the official acts and proceedings of the governor, and perform other duties as prescribed by law. He may be required by either house of the general assembly to exhibit his record with the papers, minutes and vouchers relating thereto.

SEAL—COMMISSIONS.

1 Section 22. The present great seal of Pennsylvania shall be the seal of the
2 commonwealth. Commissions shall be in the name and by the authority of the
3 Commonwealth of Pennsylvania. They shall be sealed with the state seal and
4 signed by the governor.

On the question,

Will the commission agree to the sections?

Mr. ENGLISH. Mr. Chairman: I move their adoption.

Mr. SULZEBERGER. Mr. Chairman: I second the motion.

On the question,

Will the committee agree to the motion?

Mr. REED. Mr. Chairman: You are so particular about the language, in section twenty-two, "The present great seal of Pennsylvania shall be the seal of the commonwealth," and that all documents be sealed with the state seal. What is the state seal?

The CHAIRMAN. What is that section?

Mr. REED. Section twenty-two. We are using the word "commonwealth" all through, and then say everything shall be sealed with the state seal. Why not say "seal of the commonwealth?" I move that be amended by inserting the word "great" instead of "state."

Mr. FISHER. Mr. Chairman: I second the amendment.

The amendment was agreed to.

Mr. FISHER. Mr. Chairman: May I refer the commission to section 5-A. The last sentence of that section seems to me to be somewhat confused. Perhaps it is my lack of mental grasp. "The person having the highest number of votes shall be the governor. If two or more shall have the same and the highest number of votes, one of them shall be chosen governor by the joint vote of the members of both houses." I was just a little curious to know how they could have the same and the highest number of votes at the same time. Of course, I assume the highest number is intended to refer to those who have the highest number and are tied.

Mr. SULZBERGER. If there were five candidates, and two had ten thousand, each had ten thousand, and one had two hundred and twelve, the highest number has got to be high as to both; that is, two have the highest number. It is not a beautiful sentence, I admit, but I do not think there is any doubt about the meaning. It might be improved in form.

Mr. GORDON. Mr. Chairman: As a matter of language, the style in the section, or the provision as to the lieutenant governor, in section 12-A, which now reads, "The lieutenant governor shall be chosen with the same qualifications, at the same time," and so on. "With the same qualifications" there refers to the manner of choosing, which is not intended. If you turn to the same article in the old constitution, it says "A lieutenant governor shall be chosen at the same time,"—that is all right,—"in the same manner,"—that is all right,—"for the same term, and subject to the same provisions as the governor,"—that is all right. The change which is made is ungrammatical, and does not express the idea. It should read as follows: "The lieutenant governor shall have the same qualifications, and shall be chosen at the same time, and in the same manner, and for the same term as the governor." As it stands now the direction is that he shall be chosen with the same qualifications, which is not what it means. I moved to amend it accordingly.

Mr. FISHER. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the commission agree to the sections as read and amended?

They were agreed to.

ARTICLE IV, SECTION 1.

The commission proceeded to the consideration of section 1 of article IV.

The secretary read the section as follows:

EXECUTIVE POWER.

1 Section 1. The executive power of the commonwealth shall be vested in a
2 governor, a lieutenant governor, a secretary of the commonwealth, an attorney
3 general, an auditor general, a state treasurer, a secretary of internal affairs, a
4 commissioner of education, and in other executive officers as prescribed by law.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE IV, SECTION 5-C.

The commission proceeded to the consideration of section 5-C of article IV.

The sercretary read the section as follows:

TERM OF GOVERNOR.

1 Section 5-C. The governor shall hold office for four years from the third
2 Tuesday of January succeeding his election or until his successor shall qualify,
3 A person elected governor shall not be eligible for the succeeding term.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE IV, SECTION 8.

The commission proceeded to the consideration of section 8 of article IV.

The secretary read the section as follows:

APPOINTING POWER.

1 Section 8. The governor shall appoint a secretary of the commonwealth, an
2 attorney general, a secretary of internal affairs and a commissioner of educa-
3 tion, to serve during his pleasure, and other officers as prescribed by law.
4 When the senate is in regular session, the governor shall exercise the power
5 to appoint an officer only after nomination to the senate and by and with the
6 advice and consent of a majority of its members, except where he shall appoint
7 to fill a vacancy occurring within ten days before final adjournment of the
8 session.
8 The governor may fill by appointment a vacancy in an office to which he
10 may appoint. If he shall appoint to an appointive office during a recess of the
11 senate or to fill a vacancy occurring within ten days before final adjournment
12 of a regular session thereof, such appointment shall be valid until the end of the
13 next regular session of the senate, and the person so appointed shall be deemed
14 to have been rejected by the senate at such session unless nominated by the
15 governor and confirmed by the senate.
16 The governor may fill by appointment a vacancy in the office of auditor general,
17 state treasurer and in any other elective office which he may be authorized to
18 fill. Such vacancy shall be filled by election on the next election day appropriate

19 to the office which shall fall not less than sixty days after the occurrence of the
20 vacancy. Such appointee shall serve until the person so elected shall take office
21 as prescribed by law.
22 If a power of appointment to an appointive or elective office shall arise
23 during a session of the senate and not within ten days before final adjournment,
24 the governor shall, at such session, nominate a proper person for the office. If
25 a power of appointment to an appointive office shall arise within ten days before
26 final adjournment of a session of the senate or during a recess of the senate,
27 he shall, at the next session of the senate, nominate a proper person for the
28 office. In either case, if the senate shall reject a nomination and shall notify
29 the governor that it will not adjourn within ten days, he shall nominate another
30 person for the office. If he shall fail to nominate as herein required, he may
31 not appoint to the office except after nomination to the senate and by and with
32 the advice and consent of a majarity of its members.
33 If the nomination of a person to an office shall be rejected by the senate he
34 shall not be appointed to such office before the next session of the senate.
35 In acting on executive nominations, the senate shall sit with open doors. The
36 vote shall be taken by yeas and nays and shall be entered on the journal.

On the question,
Will the commission agree to the section?
It was agreed to.

ARTICLE IV, SECTION 12.

The commission proceeded to the consideration of section 12 of article IV.

The secretary read the section as follows:

POWER TO ADJOURN OR CONVENE GENERAL ASSEMBLY.

1 Section 12. The governor, in case of disagreement between the two houses of
2 the general assembly with respect to the time of adjournment, may adjourn
3 them to such time as he may think proper not exceeding four months. He may
4 on extraordinary occasions convene the general assembly and he may convene
5 the senate for the transaction of executive business.

On the question,
Will the commission agree to the section?

Mr. FISHER. Mr. Chairman: I note that the new provisions submitted by the committee on style omit the method by which the governor shall convene a special session. There is no reference to a proclamation as there is in the old section. I move to insert in the fourth line after the word "convene" the words "by proclamation," so that the sentence will read, "He may on extraordinary occasions convene by proclamation the general assembly," and insert "by proclamation" again after the word "convene" in the fourth line, so that the whole sentence shall read, "He may on extraordinary occasions convene by proclamation the general assembly, and he may convene by proclamation the senate for the transaction of executive business."

Mr. CARSON. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,
Will the commission agree to the section as amended?
It was agreed to.

ARTICLE IV, SECTION 13.

The commission proceeded to the consideration of section 13 of article IV.

The secretary read the section as follows:

VACANCY IN GOVERNORSHIP.

1 Section 13. If the office of governor shall be vacant the lieutenant governor
2 shall become governor. If the governor shall fail to qualify or shall be under a
3 disability, the powers, duties and emoluments of his office until the end of the
4 governor's term or until he shall qualify or his disability shall be removed shall
5 devolve on the lieutenant governor, or, if his office shall be vacant or he shall
6 be under a disability, then on the president pro tempore of the senate, or if his
7 office shall be vacant or he shall be under a disability, then on a person elected
8 by a majority of the members of the general assembly. For the purpose of such
9 election, the general assembly may convene in special session without a proclama-
10 tion of the governor upon a call signed by five members of the house.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE IV, SECTION 14.

The commission proceeded to the consideration of section 14 of article IV.

The secretary read the section as follows:

VACANCY IN LIEUTENANT GOVERNORSHIP.

1 Section 14. If the office of lieutenant governor shall be vacant or if he shall
2 fail to qualify or shall be absent or under a disability, the powers, duties and
3 emoluments of his office shall devolve on the president pro tempore of the senate
4 for the remainder of the lieutenant governor's term or until his disability be
5 removed. In such event the seat in the senate of the president pro tempore of
6 the senate shall become vacant.

On the question,

Will the commission agree to the section?

Mr. ALTER. Mr. Chairman: I will move to amend section 14 by inserting after the word "office" in line three the words, "until the end of his term, or until he shall qualify or return, or his disability shall be removed," and to strike out the clause in that sentence, in lines four and five, "for the remainder of the lieutenant governor's term, or until his disability be removed," so that the first sentence of the section shall read, "If the office of lieutenant governor shall be vacant or if he shall fail to qualify or shall be absent or under a disability, the powers, duties and emoluments of his office until the end of his term, or until he shall qualify or return, or his disability shall be removed, shall devolve on the president pro tempore of the senate." The purpose of the amendment is to provide for the event of the lieutenant governor returning or qualifying. The section as it now stands provides only for the removal of his disability.

Mr. GORDON. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE IV, SECTION 14-A.

The commission proceeded to the consideration of section 14-A of article IV.

The secretary read the section as follows:

DETERMINATION OF DISABILITY.

1 Section 14-A. The fact of disability of the governor or the fact of disability
2 of the lieutenant governor shall be determined only by the supreme court on
3 the address of the general assembly, agreed to by a majority of the members
4 of each house, or, if the general assembly be not in session, on the written
5 address of such majority.

On the question,

Will the commission agree to the section?

Mr. ALTER. Mr. Chairman: I move to amend this section by inserting after the words "lieutenant governor" in line two the words "or of the person upon whom the powers and duties of either office would otherwise devolve," so that the provisions of this case apply not only to the governor and lieutenant governor, but to any other person upon whom the office of governor may devolve under the provisions of this constitution.

Mr. GORDON. Mr. Chairman: I second the amendment.

On the question,

Will the commission agree to the amendment?

Mr. FOX. Mr. Chairman: I would like to suggest, if Mr. Alter will permit, to put in the word "emoluments."

The CHAIRMAN. Is not the word emoluments in this section? The question suggested, Mr. Alter, is whether it is necessary to put the word emoluments in the amendment?

Mr. ALTER. I think not.

On the question recurring,

Will the commission agree to the amendment?

It was agreed to.

On the question,

Will the commission agree to the section as amended?

Mr. FISHER. Now, Mr. Chairman, in view of the amendment that has been made in the second line, I move to strike out the words, "or the fact of disability," so that the section will read. "The fact of disability of the governor or of the lieutenant governor," and followed by the words of the section.

Mr. THORPE. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question recurring,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE IV, SECTION 19.

The commission proceeded to the consideration of section 19 of article IV.

The secretary read the section as follows:

SECRETARY OF INTERNAL AFFAIRS.

1 Section 19. The secretary of internal affairs shall exercise the powers and
2 perform the duties of the surveyor general, subject to change as prescribed by
3 law. His department shall embrace a bureau of industrial statistics, and he
4 shall discharge such duties relating to corporations, to the charitable institu-
5 tions, agricultural, manufacturing, mining, mineral, timber and other material
6 or business interest of the commonwealth as prescribed by law. He shall
7 report to the general assembly biennially, and at such other times as may be
8 required by law.

On the question,

Will the commission agree to the section?

Mr. GORDON. Mr. Chairman: This office was created, I believe, by the constitution of 1874, and that constitution provided that "The secretary of internal affairs shall exercise all the powers and perform all the duties of the surveyor general, subject to such changes as shall be made by law. His department shall embrace a bureau of industrial statistics,"—that is a positive enactment,—"and he shall discharge such duties relating to corporations, to the charitable institutions, agricultural, manufacturing, mining, mineral, timber and other material or business interests of the state as may be prescribed by law." Now, these words are repeated in the section under consideration, but since the adoption of the constitution of 1874 the legislature has prescribed by law the duties of the secretary of internal affairs, and I think it is bad draftmanship to continue that provision in this constitution as though they were creating a new department for which new legislation would have to be passed. I therefore suggest for the section under consideration that the following be substituted:

Until otherwise prescribed by law, the secretary of internal affairs shall exercise the powers and perform the duties prescribed by law when this constitution becomes effective. His department shall embrace a bureau of industrial statistics."

Mr. CARSON. Mr. Chairman: I second the amendment.

On the question.

Will the commission agree to the amendment?

Mr. FISHER. Mr. Chairman: May I ask Judge Gordon whether he intends to omit the reference to the biennial reports?

Mr. GORDON. Not at all. I only substitute this for all that goes before it.

Mr. FISHER. Mr. Chairman: I was going to make a motion that we strike out the reference to the report of the secretary of internal affairs. It is a subject covered by general legislation, and there is no reason why it should be made a constitutional provision.

The CHAIRMAN. Is that accepted by Mr. Gordon?

Mr. GORDON. Yes, I accept that.

Mr. REED. Mr. Chairman: I was told early in the consideration of this section by one of our eminent members that it is very bad constitutional drafting to do just what Judge Gordon has suggested; that is, refer to the original laws if we do not know what they are, and say that the officer shall have all the powers and jurisdiction that he now has. I do not see, and I say that with all deference to the Judge, what the advantage is in changing the provision in which his duties are more or less itemized.

On the question recurring,

Will the commission agree to the amendment?

It was agreed to.

On the question,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE IV, SECTION 21.

The commission proceeded to the consideration of section 21 of article IV.

The secretary read the section as follows:

AUDITOR GENERAL AND STATE TREASURER.

1 Section 21. The auditor general and the state treasurer shall be chosen by
2 the electors of the commonwealth. Each shall hold his office for four years and
3 neither shall be eligible for the succeeding term.

On the question,
Will the commission agree to the section?
It was agreed to.

ARTICLE IV, SECTION 21-A.

The commission proceeded to the consideration of section 21-A of article IV.

The secretary read the section as follows:

STATE CONTRACTS.

1 Section 21-A. No member of the general assembly or officer or employe of
2 the state government shall be interested in a contract with the state government,
3 or in furnishing thereto materials or supplies.

On the question,
Will the commission agree to the section?
It was agreed to.

ARTICLE IV, SECTION 21-B.

The commission proceeded to the consideration of section 21-B of article IV.

The secretary read the section as follows:

PUBLIC PRINTING AND SUPPLIES.

1 Section 21-B. The printing and binding for the state government shall be
2 performed under contract or by the state government. Furnishings and fuel for
3 the capitol buildings and paper and stationary for the state government shall be
4 made by the state government or procured under contract. Contracts for work
5 or material designated in this section shall be awarded to the lowest responsible
6 bidder and subject to the approval of the auditor general and of the state
7 treasurer.

On the question,
Will the commission agree to the section?

The CHAIRMAN. The secretary calls attention to a typographical error which he will state.

The SECRETARY. In line 4 after the word "made" insert the words "or produced."

On the question recurring,
Will the commission agree to the section?

Mr. PEPPER. Mr. Chairman: I dislike to make a mere verbal criticism. Is it not rather grandiose to say "printing and binding for the state shall be performed?" Why not substitute "done" for "performed?" I would move the substitution of the word "done" for "performed."

The CHAIRMAN. Is there any objection to the substitution? The Chair hears none, and the substitution will be made.

On the question recurring.
Will the committee agree to the section?

Mr. FISHER. Mr. Chairman: In the last sentence the provision is that "Contracts for work or material designated in this section shall be awarded to the lowest responsible bidder and subject to the approval of the auditor general and the state treasurer." May I

ask the chairman, who I think is familiar with this, whether that in any way changes the present method of handling these subjects by the board of public grounds and buildings?

The CHAIRMAN. Well I think it does; but the purpose was to take out of the constitution the requirement that the govenor shall approve a great multiplicity of contracts that he knows, simply could know nothing about, and of which his approval is merely a matter of form, or signing his name.

Mr. FISHER. Then, may I ask whether the desire was to allow the state in awarding state contracts to be represented solely by the auditor general and the state treasurer?

The CHAIRMAN. As to those particular contracts, yes; that was the thought. As they are the fiscal officers of the commonwealth the particular classes of contracts enumerated in this section were contracts peculiarly concerned with things with which they were familiar, the general administration of affairs so far as printing and binding and furnishing fuel, and so on, are concerned.

The secretary calls attention to the fact that the word "and" in line six before the word "subject" is a typographical error and should be stricken out.

On the question recurring,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE V, SECTION 3, 21-A, 23 AND 27.

The commission proceeded to the consideration of sections 3, 21-A, 23 and 27 of article V.

The secretary read the sections as follows:

JURISDICTION OF SUPREME COURT.

1 Section 3. The jurisdiction of the supreme court shall extend over the state,
2 and the judges thereof shall, by virtue of their office, be justices of oyer and
3 terminer and general jail delivery in the several counties; they shall have origi-
4 nal jurisdiction in cases of injunction where a corporation is a party defendant,
5 of habeas corpus, of mandamus to courts of inferior jurisdiction, and of quo
6 warranto as to officers of the commonwealth whose jurisdiction extends over the
7 state, but shall not exercise other original jurisdiction; they shall have appel-
8 late jurisdiction by appeal, certiorari or writ of error in all cases, as prescribed
9 by law.

POWER TO CHANGE VENUE.

1 Section 21-A. The power to change the venue shall be vested in the courts and
2 exercised as prescribed by law.

PROCESS OF INDICTMENTS.

1 Section 23. The style of process shall be "The Commonwealth of Pennsyl-
2 vania." Prosecution shall be carried on in the name and by the authority of
3 the commonwealth of Pennsylvania. Indictments shall conclude "against the
4 peace and dignity of the commonwealth of Pennsylvania."

TRIAL WITHOUT JURY.

1 Section 27. If the parties to a civil case shall agree to dispense with a trial
2 by jury, the court shall hear the case and shall deliver a judgment having the
3 same effect as if there had been such trial by jury.

On the question,

Will the commission agree to the sections?

Mr. ENGLISH. Mr. Chairman: I move their adoption.

Mr. SULZBERGER. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE V, SECTION 1.

The commission proceeded to the consideration of section 1 of article V.

The secretary read the section as follows:

JUDICIAL POWER.

1 Section 1. The judicial power of the commonwealth shall be vested in a
2 supreme court, a superior court, in courts of common pleas, courts of oyer and
3 terminer and general jail delivery, courts of quarter sessions of the peace,
4 orphans' courts, justices of the peace, and in other courts and judicial officers
5 as prescribed by law.

On the question,

Will the commission agree to the section?

Mr. REED. Mr. Chairman: I do not know what the objection is to the original language "such other courts as the general assembly may from time to time establish." The provision as suggested by the committee is the jurisdiction shall be in such other courts, or in the list of courts there mentioned, "and in other courts and judicial offices as prescribed by law." Can you create a court under that general term?

The CHAIRMAN? There is nothing before the commission except the motion to adopt the section.

Mr. REED. Mr. Chairman: I move to amend that by substituting for the words, "and in other courts and judicial officers as prescribed by law" the words, "such other courts as the general assembly may from time to time establish." I do not know what judicial power you would impose upon a judicial officer prescribed by law; I do not know who he is.

Mr. CARSON. Mr. Chairman: I will second the amendment.

On the question,

Will the commission agree to the amendment?

Mr. ENGLISH. Mr. Chairman: I do think, however, that the section ought to be kept within the rules that have been adopted and uniformly applied to style, and if the words "general assembly" are inserted in this section, I think perhaps that would be the only place where they are in the constitution.

Mr. REED. Well, I am willing to change that.

The CHAIRMAN. "And in such other courts as may from time to time be established."

On the question recurring,

Will the commission agree to the amendment?

It was agreed to.

On the question,

Will the commission agree to the section as amended?

Mr. FISHER. In the interest of style I move to strike out the word "in," in the second line.

The CHAIRMAN. Is there objection? That seems to be a typographical error. The chair hears no objection, and the word will be stricken out.

On the question recurring,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE V, SECTION 2.

The commission proceeded to the consideration of section 2 of article V.

The secretary read the section as follows:

SUPREME COURT.

1 Section 2. The supreme court shall consist of seven judges learned in the law,
2 who shall have the title of justice, chosen by the electors of the commonwealth.
3 They shall hold office for twenty-one years and shall not again be eligible. The
4 judge longest in continuous service shall be chief justice.

On the question,

Will the commission agree to the section?

Mr. THORPE. Mr. Chairman: In the second line the word "who" refers back to the judges, and then it uses the word "justice;" a mere matter of criticism of a name where you mean the singular in one place and the plural in the other, whether judges should be known as judges and justices known as justices.

Mr. CARSON. I do not quite catch Dr. Thorpe's motion.

The CHAIRMAN. Whether the singular or the plural is to be used.

On the question recurring,

Will the commission agree to the section?

It was agreed to.

ARTICLE V, SECTION 3-G.

The commission proceeded to the consideration of section 3-G of article V.

The secretary read the section as follows:

REGULATIVE POWER AND DUTY OF SUPREME COURT.

1 Section 3-G. The supreme court shall regulate procedure in courts of record
2 and shall adapt the processes of justice to the necessities of all litigants.
3 In the discharge of these duties it may regulate forms of action, pleading and
4 practice, proof, the keeping of judicial records, and the conditions under which
5 fees and costs may be remitted and counsel assigned without expense to litigants,
6 and may regulate the activities of any public or private agency rendering legal
7 aid.
8 Regulations, when promulgated by the chief justice, shall have the force of
9 law until modified by law and shall operate to repeal laws theretofore enacted
10 inconsistent with such regulations.
11 Subject to law and to such regulation, courts of record shall have the power
12 to make their own rules.

On the question,

Will the commission agree to the section?

The CHAIRMAN. The secretary calls attention to the fact that there is a typographical error in line four. The word "proof" should be stricken out. It was stricken out at the last meeting.

Mr. FOX. Mr. Chairman: I move to amend by striking out the words in lines six and seven "and may regulate the activities of any public or private agency rendering legal aid." I originally moved to strike these words out, and then on the suggestion that some of the members of the supreme court had already approved the form of the

section I moved to re-instate them. I have learned since that there was some misapprehension about that, and I therefore renew my original motion to strike those words out.

Mr. REED. Mr. Chairman: I second the amendment.

On the question,

Will the commission agree to the amendment?

Mr. CARSON. We did not quite catch on this side of the house what Judge Fox desires.

Mr. FOX. My motion was to amend by striking out the words, "and may regulate the activities of any public or private agency rendering legal aid."

On the question recurring,

Will the commission agree to the amendment?

It was agreed to.

On the question,

Will the commission agree to the section as amended?

Mr. REED. Did we strike out the word "proof" or insert it?

The CHAIRMAN. It has been stricken out.

Mr. PEPPER. Mr Chairman: May I inquire whether the merits of the proposal just made by Judge Fox and acted upon had been made the subject of debate, or whether there was some reason in support of the change that has been made? Has the matter been before the commission?

Mr. FOX. The matter was discussed at the last meeting.

On the question recurring,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE V, SECTION 8 (OMITTED).

Mr. FOX. Mr. Chairman: May I just at this point inquire whether or not section 8 contained in the report of the committee on style has been dropped? That was the section relating to the assignment of common pleas judges. This was originally suggested, I think, by Judge von Moschzisker, and because there might be a case arising where, on account of death, it might be necessary for the supreme court to act.

The CHAIRMAN. The Chair is informed that was dropped at the last meeting.

Mr. FOX. I think it was a mistake to drop it, but I do not want to make any motion.

ARTICLE V, SECTION 3-I.

The commission proceeded to the consideration of section 3-I of article V.

The secretary read the section as follows:

SUPERIOR COURT.

1 Section 3-I. The superior court shall consist of seven judges learned in the
2 law, chosen by the electors of the commonwealth. They shall hold office for
3 twenty-one years and shall not again be eligible. The judge longest in con-
4 tinuous service shall be president judge.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE V, SECTION 3-J.

The commission proceeded to the consideration of section 3-J of article V.

The secretary read the section as follows:

JURISDICTION OF SUPERIOR COURT.

1 Section 3-J. The superior court shall have jurisdiction as prescribed by law.

On the question,

Will the commission agree to the section?

Mr. REED. Mr Chairman: Subject to the regulations of the Committee on Style, and so forth, I would move to re-insert the provision adopted on May 11, "Until otherwise directed by law the jurisdiction and powers of the superior court shall be and continue as at present established." Under the section before us it speaks altogether of the furture, "The superior court shall have jurisdiction as prescribed by law." If there is no jurisdiction prescribed, there will be no jurisdiction.

Mr. CARSON. Mr. Chairman: I second the substitute.

On the question,

Will the commission agree to the substitute?

Mr. PEPPER. Mr. Chairman: It occurs to me that the language in the section as read by the secretary is a clearer and more accurate statement than the language in the substitute as offered by Judge Reed, and it seems to me to have the same effect. "Prescribed by law" does not mean by law hereafter to be passed. It does not supersede any existing statute declaring the jurisdiction, unless I misapprehend the meaning of the language. I should think that that was a clear statement of the situation. I wish Judge Reed would make it a little clearer to us why this change is necessary. It seems to me that if a court is given jurisdiction as prescribed by law, and there is in existence a law prescribing that jurisdiction, the constitutional provision does two things; first, it permits that jurisdiction as it now exists; and in the second place, it makes it possible for the legislature to modify it. I should think clearly "as prescribed by law" applies as well to the past as to the future. It is the language which has been uniformly adopted throughout the constitution to indicate the past or future legislation which, if it does not apply to the future, there will be a great many cases where we will have to modify it elsewhere.

Mr. REED. Mr. Chairman: For the first time the superior court has made its appearance in the constitution, in this draft. Then you say it "shall have such jurisdiction as prescribed by law." Now, that is subject to two objections. It might be construed in one way, as Mr. Pepper would construe it, which seems to me to leave no power in the legislature to amend the jurisdiction which it now gives them at the date this constitution would take effect. If it is read as I think it should be, when this constitution is adopted, if it ever is, the superior court would have no powers or duties until the legislature had prescribed them.

Mr. PEPPER. In reply I will call attention to the fact that in many other changes, if there is an ambiguity here, the same ambiguity exists; for instance, in the third section of article V, where it says that certain tribunals shall have appellate jurisdiction, and so forth,

in all cases as prescribed by law. If that means as prescribed by law existing at the date of this constitution, then that crystalizes the prescription and makes it impossible for the legislature to change it in the future. I submit most earnestly that the term "prescribed by law" is without limitation of time, and prescription by law means prescription by law as the law now stands, and prescription by law as the law may hereafter be amended.

The CHAIRMAN. It does not necessarily mean statutory law. It means all the laws, common law as well as general law.

Mr. PEPPER. It is the most general term that we can use, and I think that we ought to face the seriousness of this proposal, because it requires the undoing of a large amount of work which has been adopted by this body. It would require a practical re-examination of the cases in which that phrase has been used as applicable to the past as well as to the future.

Mr. GORDON. I would like to call the attention of the Commission to the amendment which you adopted, at my suggestion, as to the secretary of internal affairs. Here the intention of the amendment was to give the secretary of internal affairs duties now prescribed by law, and that is how the amendment passed, "Until otherwise prescribed by law the secretary of internal affairs shall perform the duties prescribed by law when this constitution becomes effective." I do not think there is any different ruling obtaining as to the interpretation of language such as this is in the constitution as obtains in respect to the interpretation of a statute, and the provision that the superior court shall have jurisdiction as prescribed by law is not clear. It is not clear because it is susceptible of three constructions, as set forth by my learned colleagues to my right. It may mean jurisdiction as may be prescribed by law, or jurisdiction as has been prescribed by law, or jurisdiction as is prescribed by law, or each of them. I think there is a doubt and uncertainty about it, and as the statutes are considered to be speaking in the present tense unless it is otherwise clearly disclosed to the contrary, I would say that the normal reading of this would be that the superior court shall have jurisdiction as prescribed by law, that is, as is prescribed by law, and would fix that jurisdiction in the constitution and not permit it to be changed in all probability.

Mr. CARSON. In section 3 of this article we have given a constitutional definition of the boundary lines of the jurisdiction of the supreme court, and they are similar to what is contained in article III, the judicial article of the constitution of the United States. Now, as Judge Gordon has observed, for the first time we are putting the superior court into the constitution. We all have in mind the pecuniary limitation of the jurisdiction prevailing in the superior court at the present time, which limits it to fifteen hundred dollars. We want to get rid of that some day, because it limits the usefulness of the court and perhaps overburdens them, by making them, as Chief Justice Agnew once said, a mere bench of squires. Now, that the superior court shall have jurisdiction as prescribed by law, taken just as the words stand there, seems to be an almost unnecessary declaration. Of course, the court has the jurisdiction prescribed by law. We are not giving them anything which they have not already got. What we want to do, as I understand it, is to save the present jurisdiction until it is changed, but not to drop any barrier in the way of the

legislative extension of their jurisdiction in the future, and therefore it does seem to me that it is far simpler to adopt Judge Reed's suggestion, that until otherwise directed by law the jurisdiction of the superior court shall remain as it is at present. That makes it perfectly safe and it opens the door to such future legislative action as may be considered wise in the extension of the jurisdiction of that exceedingly useful court. So that was the reason why I seconded Judge Reed's amendment. I think that his language is preferable to that which is suggested in the report of the committee on style.

Mr. THORPE. Our language is a little shy on explicitness, perhaps; but might it not solve the problem if we used the words "may be prescribed by law"? That includes past, present or future.

Mr. REED. What is the use of putting in a lot of language which it takes all the Philadelphia lawyers in the commission, who are proverbially the pride of the country, to construe, and they cannot agree on what is here?

Mr. CARSON. We are coming to your relief.

Mr. REED. I know.

Mr. CARSON. They find that the necessities of the situation require their intervention.

Mr. REED. Why not obviously and clearly say it shall have the jurisdiction it had and may be given to it in the future? And the same thing ought to be done in the section relating to the supreme court when we get to it.

The CHAIRMAN. The chair offers this suggestion so that the language will be in agreement throughout the constitution. If the words "now or hereafter" were inserted after the words "as prescribed," would that solve it?

Mr. REED. Yes, sir.

Mr. GORDON. Yes, sir.

Mr. REED. I withdraw my motion and accept that suggestion.

Mr. McCORMICK. Do not those words run through the entire constitution, and if you add "now or hereafter" in this case, won't you have to do it in every other place?

The CHAIRMAN. I think there is something in that suggestion, too.

Mr. McCORMICK. The committee on style adopted that phrase, I understand, and it is carried through the entire constitution.

The CHAIRMAN. The only question before the commission is the question of adopting the substitute as proposed by Judge Reed in the language he has given.

Mr. REED. Mr. Chairman: I will adopt the chairman's suggestion, if you will permit me to make the motion. "The superior court shall have jurisdiction as now or hereafter may be prescribed by law."

Mr. GORDON. Mr. Chairman: I second the amendment.

On the question,

Will the commission agree to the amendment?

It was agreed to.

On the question,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE V, SECTION 3.

The CHAIRMAN. The chair would inquire as to whether the same amendment should not be made to section 3 of this article.

Mr. REED. Yes, sir.

RECONSIDERATION OF VOTE.

Mr. REED. I move to reconsider the vote by which section 3 of article V was adopted.

Mr. GORDON. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE V, SECTION 3.

The commission resumed consideration of section 3 of article V. The section was read by the secretary as follows:

JURISDICTION OF SUPREME COURT.

1 Section 3. The jurisdiction of the supreme court shall extend over the state,
2 and the judges thereof shall, by virtue of their offices, be justices of oyer and
3 terminer and general jail delivery in the several counties; they shall have
4 original jurisdiction in cases of injunction where a corporation is a party defend-
5 ant, of habeas corpus, of mandamus to courts of inferior jurisdiction, and of quo
6 warranto as to officers of the commonwealth whose jurisdiction extends over the
7 state, but shall not exercise other original jurisdiction; they shall have appellate
8 jurisdiction by appeal, certiorari or writ of error in all cases, as prescribed
9 by law.

On the question recurring,

Will the commission agree to the section?

Mr. REED. Mr. Chairman: I would move that the words "now or hereafter" be inserted in this section in the appropriate place.

Mr. GORDON. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE V, SECTION 5-A.

The commission proceeded to the consideration of section 5-A of article V.

The secretary read the section as follows:

JUDICIAL DISTRICTS.

1 Section 5-A. The state shall be divided by law into judicial districts. A
2 county having fifty thousand inhabitants may constitute a separate district. No
3 county shall be divided in the formation of a district and no more than four
4 counties shall be included in a district.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE V, SECTION 5-B.

The commission proceeded to the consideration of section 5-B of article V.

COURTS OF COMMON PLEAS.

1 Section 5-B. In each county there shall be a court of common pleas con-
2 sisting of one or more judges learned in the law, chosen by the electors of the
3 judicial district in which the county is situated. The shall hold office for ten
4 years. The judge longest in continuous service shall be the president judge.
5 The office of associate judge not learned in the law is abolished, but associate
6 judges in office when this constitution becomes effective shall hold office for their
7 unexpired terms.

On the question,

Will the commission agree to the section?

Mr. FISHER. Mr. Chairman: It seems to me to add a little clearness to the expression if in line three we strike out the word "They" at the beginning of the sentence in the middle of the line, and insert the words "The judges," so that the sentence will read, "The judges shall hold office for ten years," Then insert immediately thereafter at the beginning of the next sentence the words, "In districts containing more than one judge," so that that sentence shall read, "In districts containing more than one judge, the judge longest in continuous service shall be the president judge." I move to make the amendment.

Mr. FOX. Mr. Chairman: I would ask Senator Fisher what you would do in the case of having only one judge? We have to have a president judge.

The CHAIRMAN. The chair hears no second to the amendment, and the amendment falls.

On the question recurring,

Will the commission agree to the section?

It was agreed to.

ARTICLE V, SECTION 5-C.

The commission proceeded to the consideration of section 5-C of article V.

The secretary read the section as follows:

JURISDICTION OF COURTS OF COMMON PLEAS.

1 Section 5-C. The courts of common pleas of each county shall have original
2 jurisdiction in civil cases except where such jurisdiction shall be vested by law in
3 other courts. It shall have power to issue writs of certiorari to justices of the
4 peace and to inferior courts not of record and, except where otherwise prescribed
5 by law shall have jurisdiction in appeals from justices of the peace. It shall
6 have such other jurisdiction as may be prescribed by law.
7 A judge of the court of common pleas shall be, in the county, a justice of the
8 peace as to criminal matters.
9 In addition to the powers herein conferred the court of common pleas shall
10 have and exercise, subject to such changes as may be made by law, such chancery
11 powers as are now vested by law in the several courts of common pleas of the
12 commonwealth, or as may hereafter be conferred upon them by law.

On the question,

Will the commission agree to the section?

Mr. ALTER. Mr. Chairman: I move to amend section 5-C by striking out all after the word "peace" in line five, and substituting the following: "It shall have the chancery jurisdiction vested in the court of common pleas when this constitution become effective. In addition to the powers conferred in this section, the court of common pleas shall have other jurisdiction as prescribed by law. A judge of the court of common pleas shall be, in the county, a justice of the peace as to criminal matters." The substantial purpose of the pro-

posed amendment is to give the commission an opportunity to decide whether it is preferred to have chancey jurisdiction left in the court of common pleas with power in the legislature to take it away, or to vest the present chancery powers in the court of common pleas without any power on the part of the legislature to take away any of them, but giving the legislature the power of adding other power if they see fit.

Mr. FISHER. Mr. Chairman: I second the amendment.

On the question,

Will the commission agree to the amendment?

Mr. PEPPER. Mr. Chairman: May I ask Mr. Alter whether this would be a case for the application of Judge Reed's amendment that prevailed a few moments ago?

Mr. ALTER. I would hardly think so.

Mr. PEPPER. "In addition to the power conferred by this section, the court of common pleas shall have other jurisdiction as prescribed by law," if that means only the jurisdiction as it now exists—

Mr. ALTER. I would like to have the privilege of referring the question to Judge Reed.

Mr. REED. Make it a little clearer and put in the words "now or hereafter."

Mr. ALTER. I am quite willing to have the amendment changed to that effect.

On the question recurring,

Will the commission agree to the amendment?

It was agreed to.

On the question,

Will the commission agree to the section as amended?

It was agreed to.

CORRECTION OF TYPOGRAPHICAL ERROR.

Mr. CARSON. Before we pass from these sections I only want to call attention to a typographical error at the foot of it, which might be copied by the printer in following copy. Ought article IV be there, ought it not be article V?

The CHAIRMAN. Yes, that change will be made.

ARTICLE V, SECTION 6-B.

The commission proceeded to the consideration of section 6-B of article V.

The secretary read the section as follows:

COMMON PLEAS COURT IN PHILADELPHIA.

1 Section 6-B. In the County of Philadelphia the jurisdiction of the several
2 courts of common pleas shall be vested in one court of common pleas. Until
3 otherwise prescribed by law, the court shall be composed of fifteen judges. The
4 first judges shall be those holding office in the several courts of common pleas
5 when this constitution becomes effective. The judge longest in continuous service
6 shall be president judge.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE V, SECTION 6-C.

The commission proceeded to the consideration of section 6-C of article V.

The secretary read the section as follows:

COURTS OF OYER AND TERMINER AND OF QUARTER SESSIONS OF THE PEACE.

1 Section 6-C. In each county there shall be a court of oyer and terminer and
2 general jail delivery and a court of quarter sessions of the peace. The judges
3 of the court of common pleas of the county shall be the judges of such courts.

On the question,

Will the commission agree to the section?

Mr. REED. Mr. Chairman: What are you going to do with this other provision in Philadelphia? If two judges happen to be elected in the same year in the same court, as I suppose they have been, who is going to be the president judge?

The CHAIRMAN. I think that is provided for in the general section.

Mr. CARSON. There is a typographical error there in the word "section."

The CHAIRMAN. The secretary will see that that is corrected.

On the question recurring,

Will the commission agree to the section?

It was agreed to.

ARTICLE V, SECTION 6-D.

The commission proceeded to the consideration of section 6-D of article V.

The secretary read the section as follows:

ORPHANS' COURTS.

1 Section 6-D. In each county there shall be an orphans' court.
2 In a county having more than one hundred and fifty thousand inhabitants there
3 may be a separate orphans' court, with the jurisdiction of orphans' courts when
4 this constitution becomes effective and with other jurisdiction as prescribed by
5 law. Such courts shall consist of one or more judges learned in the law, chosen
6 by the electors of the county. They shall hold office for ten years. The judge
7 longest in continuous service shall be president judge.
8 In a county with a separate orphans' court, the register of wills of the county
9 shall be the clerk thereof. He shall appoint assistant clerks only with the
10 approval of the court. Accounts filed with him as register or as clerk shall be
11 audited by the court without expense to the parties, unless the court shall
12 appoint an auditor nominated by all parties in interest.
13 In a county without a separate orphans' court, the judges of the court of
14 common pleas shall be the judges of the orphans' court, but only until the
15 establishment of a separate orphans' court.

On the question,

Will the commission agree to the section?

Mr. CARSON. Mr. Chairman: I do not wish to be captious, but it seems to me that in the third paragraph of that section, we have dropped out of sight what was considered quite an important reservation of power on behalf of the judge upon whom this appointment may devolve. Beginning with line ten, the words read: "Account filed with him as register or as clerk shall be audited by the court without expense to the parties, unless the court shall appoint an auditor nominated by all parties in interest." Now, con-

trast that language with the four lines from the bottom of the section as adopted at the sessions beginning May 11, 1920, where it says, "except where all parties interested in a pending proceeding shall nominate an auditor whom the court may, in its discretion, appoint." By taking out the words "in its discretion" you seem to make it possible, it might even seem to be obligatory on the court, no matter what its views of the situation might be, or no matter what its readiness to act in the interest of economy to the parties themselves by serving without expense, to enable a little coterie of lawyers to get together, or parties to get together, and suggest the name of an auditor, and then put on the court the burden of surrendering its own jurisdiction. I think we have got to guard the right of the parties requesting an auditor in case of difficulty, and also retain the regulating power on the part of the judge if he finds the application is not necessary by the insertion of these words, "unless the court shall appoint in its discretion an auditor on the nomination of the parties in interest." I therefore move that amendment.

Mr. SULZBERGER. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the commission agree to the section as amended?

Mr. ALTER. Mr. Chairman: It was suggested yesterday by a gentleman with whom I was conversing upon this section, one of the orphans' court judges, that sometimes there arise cases which are very complicated and which would make it somewhat desirable to have an auditor appointed, and yet some of the parties in interest are not before the court. Therefore you can not get an agreement by all the parties in interest, and the thought suggested was that it might be helpful to the court if this language were changed so as to read "all parties in interest represented in the proceeding," and I would move that the words "represented in the proceeding" be added at the end of this paragraph.

Mr. GORDON. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE V, SECTION 11.

The commission proceeded to the consideration of section 11 of article V.

The secretary read the section as follows:

JUSTICES OF THE PEACE NOT IN PHILADELPHIA.

Section 11. Each county, except the county of Philadelphia, shall be divided by its courts of common pleas into justice of the peace districts. A borough, township or city with a population of fifty thousand or less shall not be divided. A district may be composed of two or more townships or boroughs or any borough or township may be attached to a district comprising all or a portion of a city. In a city with a population of more than fifty thousand, the number of inhabitants shall be divided by fifty thousand and the number of districts to which the city shall be entitled shall be the quotient. Population shall be determined by the latest United States decennial census. After each decennial census the court of common pleas may create new districts and may change the boundaries of districts. After any such revision of the districts, no new district shall be created and no change of boundary shall be made prior to the next decennial census.

14 In each district one justice of the peace shall be chosen by the electors at a
15 municipal election. He shall have been a resident of his district for two years
16 next preceding the election unless absent on the public business of the United
17 States, of the state government or of a municipality of the commonwealth. He
18 shall hold office for six years from the first Monday after his election and shall
19 reside in his district during his term of office. Upon petition of a least two
20 hundred electors of the district setting forth, a reasonable cause for his removal,
21 he shall be removed from office by the court of common pleas if the court, after
22 hearing, finds such cause to exist. In such event a justice of the peace may
23 appeal to the superior court. A vacancy in the office of justice of the peace
24 shall be filled by the governor.
25 For services rendered in judicial proceedings a justice of the peace shall
26 receive a salary prescribed by law and paid by the county, and no other compen-
27 sation. Fees, fines and penalties received by a justice of the peace shall be paid
28 into the county treasury for the use of the county.
29 Until otherwise prescribed by law, justices of the peace in any county shall
30 have the jurisdiction and powers of the justices of the peace of the county exist-
31 ing when this constitution becomes effective.
32 Justices of the peace in office when this constitution becomes effective shall
33 serve their unexpired terms. On the expiration of such terms, the office of jus-
34 tice of the peace as theretofore existing is abolished. Vacancies occurring prior
35 to the expiration of such terms shall not be filled.

On the question,

Will the commission agree to the section?

Mr. ALTER. Mr. Chairman: I would move to strike out in lines eighteen and nineteen, "and shall reside in his district during his term of office;" the reason for making the motion being that there is a general provision in article V which covers all these officers as well as including the ones mentioned in this section, and this would be a useless repetition.

Mr. GORDON. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the commission agree to the section as amended?

Mr. FISHER. In line twenty-five, the third paragraph, I move the words, "for services rendered in judicial proceedings," be stricken out. Begin the sentence with the words "A justice," so that the sentence shall read, "A justice of the peace shall receive a salary prescribed by law".

Mr. THORPE. Mr. Chairman: I second the amendment.

On the question,

Will the commission agree to the amendment?

The CHAIRMAN. Would that make that the exclusive method of paying for all services? We had this question up when this section was under consideration, as the chair recalls.

Mr. FISHER. I would make it, yes, Mr. Chairman, for all services rendered in connection with the office.

Mr. REED. He could not take acknowledgments.

Mr. FISHER. That is not a judicial function.

The CHAIRMAN. How are you going to get acknowledgments taken?

Mr. FISHER. If there is a reason for it, I withdraw my motion.

The CHAIRMAN. There is a reason for it; acknowledging pension papers, for instance. The justice of the peace rides around the county.

Mr. FISHER. In view of the explanation by the chairman, I withdraw my motion.

Mr. REED. Well then, in the next sentence, doesn't he pay them into the county treasury, if he rides around the county and takes acknowledgments? It says here, "Fees, fines and penalties received by a justice of the peace shall be paid into the county treasury."

The CHAIRMAN. I think that should be, "Fees, fines and penalties in judicial proceedings."

Mr. REED. Mr. Chairman: I make a motion to make that amendment.

Mr. FISHER. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE V, SECTION 12.

The commission proceeded to the consideration of section 12 of article V.

The secretary read the section as follows:

JUSTICES OF THE PEACE IN PHILADELPHIA.

1 Section 12. The county of Philadelphia shall be divided by its court of com-
2 mon pleas into eighteen justice of the peace districts as nearly equal in popula-
3 tion as possible. After each United States decennial census, the court of com-
5 mon pleas may create new districts and may alter the boundaries of districts.
5 After any such revision of the districts, no new district shall be created and no
6 change of boundary shall be made prior to the next decennial census. The num-
7 ber of districts shall not exceed one for each one hundred thousand of popula-
8 tion.
9 In each district of one justice of the peace learned in the law shall be chosen
10 by the electors of the district at a municipal election. His other qualifications,
11 his term, the requirements as to his residence, and the method of his removal
12 and of filling a vacancy in his office shall be as in the case of justices of the
13 peace in other counties. For services rendered in judicial proceedings, he shall
14 receive a salary prescribed by law and paid by the county and no other com-
15 pensation. Fees, fines and penalties received by a justice of the peace shall be
16 paid into the county treasury for the use of the county.
17 A justice of the peace shall hold a court not of record. His jurisdiction in
18 civil matters shall be limited to matters involving three hundred dollars or less
19 and except as otherwise provided in this section shall be similar to that of jus-
20 tices of the peace in other counties. No political duties shall be imposed on
21 him.
22 Rules of procedure for the district peace courts not inconsistent with law or
23 with the regulations of the supreme court shall be prescribed by the court of
24 common pleas of Philadelphia county.
25 Magistrates in office when this constitution becomes effective shall serve their
26 unexpired terms. On the expiration of such terms, the office of magistrate as
27 therefore existing is abolished. Vacancies occurring prior to the expiration of
28 such terms shall not be filled.
29 The provisions of this section may be changed or abolished by law.

On the question,

Will the commission agree to the section?

Mr. REED. Mr. Chairman: If I understand that section, the committee on Style have carefully taken away all criminal jurisdiction from the common pleas judges of Philadelphia. I do not know where they finally landed it, but they don't seem to have any jurisdiction, and from reading the papers I think somebody ought to have it.

The CHAIRMAN. I think the thought of the committee was that jurisdiction in the office of the justice of the peace was common-law jurisdiction.

Mr. REED. Some justice of the supreme court will look at the old constitution and look at the new one, and say the old constitution specifically gave this jurisdiction, this criminal jurisdiction, and the new one does not; therefore they have not got it.

The CHAIRMAN. We do not want that to happen. Was there a definition in the old constitution of the jurisdiction?

Mr. REED. There surely was, and in the draft of May 11th there was a provision; and nowhere in the new draft is it given.

The CHAIRMAN. That is equally applicable to both the sections.

Mr. REED. No, because in the other section the justice is given jurisdiction on the twenty-ninth line of section eleven; he is given all the powers of the justice of the peace, but when you come to Philadelphia it is not so.

The CHAIRMAN. I think it is important that that should be taken care of.

Mr. CARSON. Before you pass to that, may I call attention to the typographical error in line nine of section twelve? The word "of" ought to be eliminated after the word "district."

The CHAIRMAN. Yes, that will be taken care of.

The suggestion has been made by the secretary to the chair that there be inserted after the word "jurisdiction" the words, "police and civil causes."

Mr. REED. That is all right, and I move to amend it that way.

Mr. ALTER. Mr. Chairman: I second the amendment.

The amendment was agreed to.

Mr. ALTER. Mr. Chairman: The secretary has called my attention to two changes which should be made in this section for the sake of accuracy. I move, therefore, to amend by striking out in line eleven the words "the requirements as to his residence." Those have been provided for generally in article V, section 16-C, as I said a while ago.

Mr. KELLY. Mr. Chairman: I second the amendment.

The amendment was agreed to.

Mr. ALTER. Mr. Chairman: I would also move to strike out in line twenty-two the words "district peace courts" and substitute the words "justices of the peace," that being the title which has now been adopted.

Mr. KELLY. Mr. Chairman: I second the amendment.

The amendment was agreed to.

Mr. FOX. Mr. Chairman: Ought we not make the same amendment that we made to the previous section, and insert in line fourteen the words "in judicial proceedings," so that the sentence will read, "Fees, fines and penalties in judicial proceedings received by a justice"?

The CHAIRMAN. May I ask, because I am not sufficiently familiar with it, is it the custom now in Philadelphia for magistrates to charge, in addition to salary, for taking acknowledgments, affidavits and so on? Do they do that, or does that go in with the salary? I can understand how in a city that might be so; but all I know about it is that the magistrates make certain returns of fees to the city, and therefore it may not be a wise thing to use the same language with reference to the city. I see the magistrates' returns every little while in the papers.

Mr. CONNELLY. The returns are for fees and fines imposed by law.

The CHAIRMAN. They do not return acknowledgments, and so forth; but would this amendment be proper?

Mr. CONNELLY. Yes, sir.

On the question,
Will the commission agree to the amendment?
It was agreed to.
On the question,
Will the commission agree to the section as amended?
It was agreed to.

ARTICLE V, SECTION 16-A.

The commission proceeded to the consideration of section 16-A of article V.

The secretary read the section as follows:

JUDGESHIPS TO BE NUMBERED.

1 Section 16-A. In each court with more than one judge the judgships shall
2 be numbered by the secretary of the commonwealth. Each elector shall vote
3 separately for the candidates for the several judgeships. No person shall be a
4 candidate for more than one judgeship in the same court.

On the question,
Will the commission agree to the section?

Mr. CARSON. Mr. Chairman: The provision in this section as reported by the committee is in contrast with the one adopted at the sessions of May last by the omission of the last two lines, that the selection of the members should be in the order of seniority in commission of the judges occupying them. By striking this out or by omitting it you seem to place purely arbitrary discretion in the secretary as to how these judgeships should be numbered. Is the discretion of the secretary to be unlimited, or is he not to be controlled by the thought, which was in mind when we adopted this, that our purpose was to give the sitting judge who had spent some years of a term, either in full or in part, about to expire, because he may have begun in the middle of a term, taken somebody else's place, or else he had been elected for an unexpired term, the advantage which properly belongs to him as an experienced officer, instead of having a vicious alphabetical arrangement by which a man whose name begins with "A" has an infinite advantage over a gentleman whose name begins with "S" or "T" at the foot of the list? Should we say, where there is more than one, "the judgeships or judges shall be numbered by the secretary of the commonwealth," or ought we not say "shall be numbered by the secretary of the commonwealth in the order of seniority in commission of the judges occupying them"? That would make it imperative that the seniority of commissions should be observed, and the declaration of the secretary as to his method of recording them and numbering them would become controlling in the arrangement of the ballots which the voters are to cast when they come to fill judicial vacancies. I think that we ought to restore these words, "in the order of the seniority in commission of the judges occupying them." I move that after the word "commonwealth" in the second line of section 16-A there be inserted the words, "in the order of the seniority in commission of the judges occupying them."

Mr. SULZBERGER. Would it not be better to restore the whole section as adopted in May? Would it not be clearer than with your amendment?

Mr. CARSON. Very good, sir. I am perfectly willing to accept that of Judge Sulzberger, in place of my motion, and I move that we restore the section as adopted in May, which reads as follows:

"In every court composed of two or more judges required to be learned in the law, including the supreme court, each judgeship shall, for the purpose of election or appointment thereto, be deemed a separate office and be distinguished by number from the other judgeships in the same court. Judgeships existing immediately after this constitution becomes effective shall be taken to be numbered in the respective courts in the order of the seniority in commission of the judges occupying them."

The CHAIRMAN. The chair will call on the secretary to read from the report of the committee what the reason was for making the change.

The SECRETARY. The special report of the committee on style states:

"We have omitted the statement appearing in this section as originally drafted, that 'for the purpose of election or appointment' each judgeship shall be 'deemed a separate office,' in order to avoid the possibility of the kind of controversy and scandal which might arise under the following circumstances: There are fifteen judges of the court of common pleas in Philadelphia county. During the session of the senate, A is appointed to the vacancy in No. 4 and B to the vacancy in No. 14. The senate rejects both nominations and adjourns. The governor appoints B to No. 4 and A to No. 14. This, it is submitted, he would not, as the section is now worded, be able to do, as the offices have not been made separate offices for any purpose; it has simply been provided that each elector shall vote separately for judges, when two or more are to be elected at the same election for the same court, in the same manner as if he were voting for persons to hold distinct offices.

"The duty of numbering the judges has been imposed upon the secretary of the commonwealth, who would, in any event, keep a record of their numbers. This is a provision less cumbersome than the provision for numbers according to seniority of commissions."

Mr. CARSON. Is not that purely a hypothetical case? And if you get the report of the committee on style, Judge Sulzberger, and look at that—

Mr. SULZBERGER. I heard it.

Mr. CARSON. Some ingenious mind may, of course, create difficulties which may be very embarassing to the governor that appoints; but the thing that is most likely to happen is that a judge who is on the bench with the name of T may come in competition, under our non-partisan judicial act, with some eight or ten or fifteen men ambitious to fill his place, with names beginning with letters of the alphabet earlier than T, and then the judge has to fight the entire field, and has his good work blocked by the constitution. We had an illustration of this when Judge Walling was a candidate for re-election. He had been on the bench and had served, and in order to save him from the possibility of defeat strenuous efforts were required, because there was another candidate from Delaware county whose name began with P. That is unfair to the sitting judge. I do not like to clothe the secretary of the commonwealth with arbitrary power to make a selection. That is not a reflection on the office, but

it is simply a comment on the weakness of men and what they may do at some time. If the secretary of the commonwealth should have the unlimited power to number candidates in any way that he sees fit, if there is a schoolmate who is his friend, he may discriminate against another man who may possibly have decided against some interest of his own in some matter that came before him.

Mr. ALTER. There are a number of things to be remembered in acting upon this amendment. One is that in the numbering by the secretary of these judgeships, it is immaterial, as between sitting judges, whether one be numbered higher or lower than another, because two sitting judges can never be candidates against each other. Each one is numbered. He holds a judgeship and is a candidate for re-election, but in that election he has to meet no one except outsiders, so that the number given to him is between him and the other sitting judges is wholly immaterial.

Mr. CARSON. That is, so far as his colleagues are concerned.

Mr. ALTER. Yes, sir.

Mr. CARSON. But not in general against all the field.

Mr. ALTER. Now, the secretary of the commonwealth has nothing to do with the arrangement of the ballot as between sitting judges and those who are not. That used to be regulated by the alphabet up to the act of 1919. It is regulated by lot, so that this power given to the secretary of the commonwealth in this section could not, by any method that I can see, be used to the benefit of anyone as against any other.

On the question recurring,

Will the commission agree to the substitute?

Mr. PEPPER. Mr. Chairman: It is a little out of the way, but before we pass away from that section, would it meet with the approval of the commission if the position of the clause including the supreme court would be changed, or perhaps altogether omitted. As it reads now it is a little clumsy. "In every court composed of two or more judges required to be learned in the law, including the supreme court." It seems to me it ought to be, "In every court, including the supreme court," and so forth, and when you put these two in correlation you see there is really no necessity for including the supreme court because your first statement is inclusive. I move the omission, sir, of the words, "including the supreme court."

Mr. CARSON. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the commission agree to the section as amended?

It was agreed to.

RECESS.

Mr. REED. Would it be in order to take a recess? I move we take a recess.

The CHAIRMAN. I think that is a motion that all the commission would like to entertain.

Mr. REED. What time will your honor be able to get back here again?

The CHAIRMAN. To what time do you wish to recess?

Mr. FISHER. Mr. Chairman: I second the motion to recess, and in making the second to this motion might I suggest to the commission the propriety of doing our fellow-members and ourselves the honor of attending the ceremonies where the oath of office will be administered to them? I understand that they will take on the new dignity of their offices at two o'clock in the executive chamber, and that the oath will be administered by the chief justice of the supreme court, Justice Brown; and in seconding the motion to recess I would suggest that we attend in a body.

The motion was agreed to.

Whereupon at 1.07 o'clock P. M., the commission took a recess until 2.30 o'clock P. M.

AFTER RECESS, PRELIMINARY.

(Mr. Justice Schaffer not being present.)

Mr. PEPPER. I have a suggestion to make, which would be to ask General Alter to take the chair for a moment.

MR. ALTER IN THE CHAIR.

Mr. PEPPER. Mr. Chairman: Our permanent chairman, Mr. Justice Schaffer, has presided over our deliberations with such distinguished ability, such exceeding courtesy, and with such great success, that I find there is a unanimous desire upon the part of the members of the commission that we should signalize the completion of his services with us by making to him some little formal expression of our regard, which might properly take the shape of a testimonial to be given to him at Christmas time. Before his return I venture to bring the matter in this way to the members of the commission, and to make a motion that you appoint a committee of three for the purpose of just giving expression to the feeling of the commission, and that the members of the commission be given an opportunity to place in the hands of the committee the means to carry the project into effect.

Mr. SULZBERGER. Mr. Chairman: I second the motion.

On the question,

Will the commission agree to the motion?

Mr. FOX. Mr. Chairman: It occurs to me that it would perhaps add very much to the interest if we could in some way have whatever we give Mr. Justice Schaffer here before we adjourn tomorrow. I believe that if it can not be obtained here in Harrisburg, it is quite possible that we can reach Philadelphia, in one of the stores, and have a loving cup or some such thing as that sent up by tomorrow morning. I simply suggest that for Mr. Pepper's consideration, but I think we would all like to be present.

Mr. PEPPER. Might not the feasibility of carrying that out also be left to the committee?

On the question recurring,

Will the commission agree to the motion?

It was unanimously agreed to.

The CHAIRMAN. Under the authority of the resolution, the chair will appoint Mr. Pepper, Mr. Fox and Judge Kelly.

AFTER RECESS.

The commission reconvened at 2.30 o'clock P. M.

The chairman, William I. Schaffer, in the chair.

The CHAIRMAN. The hour fixed for the reconvening of the commission having arrived, the commission will be in order.

There were certain sections which were passed when we were giving consideration to them this morning, and I will ask the secretary whether or not drafts have been prepared.

ARTICLE III, SECTION 15.

The commission resumed consideration of section 15 of article III. The secretary read the section as follows:

BUDGET AND APPROPRIATION BILLS.

Section 15. The governor shall submit to the general assembly a budget on or before March 1 of each year in which it shall be in regular session. The budget shall contain a complete plan of proposed appropriations and complete estimates of the revenues and funds available for appropriation for the two ensuing fiscal years, including appropriations for charitable, educational and benevolent purposes. In submitting proposals for appropriations to charitable, educational or benevolent institutions not under the absolute control of the commonwealth, the governor shall at the same time submit a plan of distribution among the classes of institutions to be benefited.

When the governor presents the budget to the house of representatives, he shall submit a general appropriation bill containing the proposed appropriations for the fiscal years covered by the budget and may also submit any bill embodying recommendations as to sources of revenue.

The presiding officer of the house of representatives shall immediately cause such bills to be introduced.

The general assembly may increase, decrease, strike out or otherwise alter any item in the general appropriation bill, or may add new items thereto.

Until the general appropriation law has been enacted neither house shall consider an appropriation bill other than the general appropriation bill unless the appropriation shall be solely for the immediate needs of the general assembly or unless the governor shall request the general assembly to act upon the bill in advance of the general appropriation bill.

After the general appropriation law has been enacted, no appropriation shall be made for any purpose, object or item included therein or in the general appropriation bill as submitted by the governor, unless the governor shall request the general assembly to pass a bill making such appropriation.

The general assembly shall not finally adjourn for ten days after the general appropriation bill has been presented to the governor.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE III, SECTION 17.

The commission resumed consideration of section 17 of article III. The secretary read the section as follows:

APPROPRIATION TO CHARITABLE AND EDUCATIONAL INSTITUTIONS.

Section 17. An appropriation for charitable, educational or benevolent purposes may be made to a class of corporations, associations or institutions not under the absolute control of the commonwealth, engaged in work or service for the public good, as such classes may be defined by law. Such work or service shall conform to standards of excellence prescribed by law or by any agency created by law.

An appropriation to such a class shall be divided among its members in accordance with a plan uniform in its application to them. Such plan shall be prescribed by law or by an agency created by law. No law shall designated such a corporation, association or institution as the beneficiary of an appropriation.

11 Each item containing such an appropriation shall be voted on separately in
12 each house before final action is taken upon the bill of which it is a part and
13 shall be stricken from the bill unless it shall receive the support of two-thirds
14 of the members elected. The votes of each house shall be taken by yeas and
15 nays and the names of the members voting for and of those voting against the
16 item shall be entered on the journal.
17 Corporations, associations and institutions receiving such appropriations shall
18 account therefor to the general assembly or to an agency prescribed by law and
19 shall be subject to inspection by the state government.

On the question,

Will the commission agree to the section?

Mr. FISHER. Mr. Chairman: I move to strike out the sentence beginning in the eighth line and reading "Such plan shall be prescribed by law or by an agency created by law."

Mr. ENGLISH. Mr. Chairman: I second the amendment.

On the question,

Will the commission agree to the amendment?

Mr. McCORMICK. Mr. Chairman: I hope that will not be done, because that really removes any plan at all, because the governor's plan is simply given as a message, it is not obligatory. The governor shall submit a plan just as he submits a budget, and I can not see that that is contradictory. This would permit the legislature to adopt the governor's plan, amend it in any way they choose, or create an entirely new plan for a uniform distribution; and I look upon the first provision in article 15, as simply requesting the governor to deliver a request or recommendation to the house of representatives or to the legislature, and I feel that this is most important and should not be stricken out, as it requires the legislature to adopt a uniform plan.

Mr. SULZBERGER. I agree with Mr. McCormick to a certain extent, but I think the words "or by an agency created by law," might very well be omitted. The two powers that we want to confine it to are the govenrnor to suggest and the legislature to enact, and I do not think we ought to have any foreign agency in it.

Mr. FISHER. Mr. Chairman: May I say, in answer to Mr. McCormick, that the first part of the sentence is simply a repetition of the first sentence of this paragraph. The first sentence of the paragraph provides "An appropriation to such a class shall be divided among its members in accordance with a plan uniform in its application to them." Of course, the inference is that the legislature will provide such a plan, and it is unnecessary to say such a plan shall be prescribed by law. The part of the sentence which reads, "by law or by an agency created by law," is in conflict with the function of the governor as now adopted in section 15. Therefore this sentence is entirely unnecessary, and in no way interferes with the thought or plan which Mr. McCormick has in mind for the distribution among charitable institutions by classes and not among individuals.

Mr. McCORMICK. I do not see any objection to striking out the words, "or by an agency created by law"; but doesn't it make it more specific, and doesn't it absolutely make it mandatory to prescribe by law the plan? I would like to have that part left in, and strike out the other words.

Mr. REED. Will you not correct this inconsistency if you make that sentence read, "Such plan shall be outlined by the governor and approved by the legislature?"

The CHAIRMAN. Is that offered as an amendment?

Mr. REED. Yes, sir; I offer it.

Mr. FISHER. We have two amendments then, Mr. Chairman.

The CHAIRMAN. The pending amendment is Judge Reed's amendment, which would be an amendment to Senator Fisher's amendment.

What is the wish of the commission?

Mr. CARSON. I think they have agreed on something.

The CHAIRMAN. That is what I understood.

Mr. REED. I do not know if they want me to withdraw that amendment or not, but I will withdraw the amendment.

The CHAIRMAN. Judge Reed's amendment is withdrawn.

Will Senator Fisher read his amendment again?

Mr. FISHER. Strike out the sentence beginning in the eighth line and reading, "Such plan shall be prescribed by law or by an agency created by law."

Mr. McCORMICK. I understand that the senator agrees, if that amendment is adopted, to insert the words "as prescribed by law."

The CHAIRMAN. That is the understanding of the chair.

On the question recurring,

Will the commission agree to the amendment?

It was agreed to.

On the question,

Will the commission agree to the section as amended?

Mr. FISHER. Mr. Chairman: I move to amend the eighth line by inserting after the word "plan" and before the word "uniform" the words "prescribed by law," so that it shall read "in accordance with a plan prescribed by law uniform in its application to them."

Mr. McCORMICK. Mr. Chairman: I second the amendment.

On the question,

Will the commission agree to the amendment?

Mr. PEPPER. Mr. Chairman: May I ask whether the word "uniform" would not in that event qualify "law" rather than "plan?" Ought it not read, "a plan uniform in its application to them and prescribed by law?"

Mr. FISHER. I accept the suggestion in that form.

On the question recurring,

Will the commission agree to the amendment?

It was agreed to.

On the question,

Will the commission agree to the section as amended?

Mr. GORDON. Mr. Chairman: I move to amend by adding a clause, the following clause: "After the first day of January, 1926, no appropriation for an educational purpose shall be made by the state government to a corporation, association or institution, or to a class of corporations, associations, or institutions, not under the absolute control of the state government or of a municipality." When this section was under discussion at previous meetings of the commission, in concert with every member of the commission an endeavor was made to limit the appropriations to state charities to a certain period, after which there was to be no further appropriation to the state charities, to charities not under state control, but the commission saw fit not to adopt that and to continue the system of appropriation to charities not under the control of the commonwealth. The purpose of the amendment which I have offered is after the year 1926 to prevent any appropriation for educational purposes to any corporation,

institution or association that is not under the absolute control of the state government. There are many reasons why this should be done. On grounds of public policy it should be done, and on grounds of public economy it should be done; on grounds of the proper maintenance of the public school system it ought to be done. There should be no diversion from the public school system of public funds to maintain in the private educational institutions. Moreover, so far as any expenditure of public money is concerned for educational purposes, it should only be for a school system public in its nature, controlled entirely by the state government, and free from any private or class or corporate control or direction whatsoever.

Mr. Finegan, the superintendent of public instruction, at the meeting when we considered the matter of the educational system of the commonwealth, pointed out how far back we were, how remiss this commonwealth was in its provision for public education. Indeed, if his figures are correct, we straggle down the line with some of the inferior and backward commonwealths south of the Mason and Dixon line, and he is crying out for more funds. There ought to be more funds for public education, and one of the indispensable conditions of that is that we shall cease to give the public money to the institutions conducted by private persons or corporations for education directed according to private design and purpose. In order that this deprivation of funds from such as now receive them may not be unnecessarily burdensome upon institutions now receiving them, we put in this proposed amendment the year 1926 as the period when such appropriations shall cease. They ought to cease. All such appropriations beget claims for more appropriations of a like character, and there ought to be an end put to that invasion of the public school fund by private enterprise and private demand, and I hope this amendment will prevail.

Mr. REED. Mr. Chairman: I second the amendment.

On the question,

Will the commission agree to the amendment?

Mr. REED. It seems to me that as there is not any possibility of this provision going into effect for two or three years the term should be extended, and I suggest that Judge Gordon make it 1928.

Mr. GORDON. I accept that amendment.

Mr. SULZBERGER. My trouble is about the word "education." I think there is a great deal of force in Judge Gordon's general position, but there is certainly one class of education which it will be difficult, if not impossible, to make a part of the general public school system, because the number of people who are taking advantage of it must necessarily be limited, that is the education for the relief of suffering in educating physicians and nurses. These are educational institutions, but they are educational institutions, designed not for the aggrandizement of any individual or classes, but for the general benefit of the community, and they operate that way. Now, is there any method of so qualifying Judge Gordon's proposition so as to leave that part open for the discretion of the legislature?

Mr. GORDON. Might not your bodies come under the head of charities?

Mr. SULZBERGER. They might, but they would come under the head of education too; and somebody, of course, would object, Now, is there ingenuity that will save these charitable institutions?

Mr. GORDON. There was a decision of the supreme court that they were charitable institutions.

Mr. SULZBERGER. We ought to affirm that decision then, because we are a body entirely different from the supreme court.

Mr. PEPPER. Mr. Chairman: The question raised by this proposal is one which seems to me to call for a good deal of consideration. The application of the proposal which first comes to my mind is the effect that it would have in making impossible legislative grants of money to institutions of higher learnings such as the University of Pennsylvania, State College and the University of Pittsburgh. In these institutions large numbers of students of the commonwealth are receiving instruction. I am not speaking for the University of Pittsburgh or for State College, but in the case of the University of Pennsylvania there are some eight hundred students out of the total enrollment who are receiving their tuition free. The continuance of the public service which these institutions are rendering would become quite impossible if the legislative appropriations were stopped. Now, it seems to me that we ought not in the constitution bring about a state of things in which the commonwealth makes it impossible for the private institutions to continue the service that they are rendering unless the commonwealth is simultaneously ready to furnish an alternative educational opportunity for those who will be deprived of it if the contemplated action passes into the organic law. In other words, it seems to me that instead of setting a time as this resolution does to the power of the legislature to make appropriations to educational institutions privately controlled, the limitation should rather take the form of a declaration that no such grants shall be made from and after the establishment of the state university. We in this commonwealth are in a transition period. In some of our sister states, perhaps the vast majority of them, the public educational system is a state university. As it has grown in this commonwealth we have not as yet developed a state university, and we rely upon the institutions privately controlled to supply to the youth of the commonwealth the higher education which they demand. I suggest that to make a merely restrictive provision that we shall no longer do that thing without simultaneously doing a piece of constructive work in the way of providing for the establishment of a state university is to do something which is not in the way of reform, but is in the way of unreasoning destruction. Now, we have in our educational article contemplated the creation of one or more state universities. That is the ideal that we have placed before ourselves in framing our educational article. If that is the case it seems to me that we want to do something now that is comfortable to that ideal, and I therefore suggest that the amendment proposed by Judge Gordon should be further modified by striking out the time limit which it contains and substituting the following phrase. Strike out the language "first day of January, 1928," and substitute the words "establishment of one or more state universities," so that the whole will read "After the establishment of one or more state universities no appropriations," and so forth, shall be made. I move that as an amendment to the pending proposal.

Mr. THORPE. Mr. Chairman: I second the amendment.

On the question,

Will the Commission agree to the amendment?

Mr. GORDON. First, unless a definite time is fixed when these appropriations are to cease, I fear they will never cease. It is a matter of state policy, and it ought not to be dependent for its inauguration upon laxity on the part of the legislative body in creating a substitute for the present subsidized universities. If the public policy is sound a time should be fixed for putting it into operation and the legislature should be trusted to carry out the mandate of the constitution as to the creation of state universities under state control. I can conceive, readily conceive, how this reform might be put aside for a decade, for generations, until the next legislature. Parsimony seems to have characterized our legislative bodies in dealing with the legislative system so far as the appropriation of money was concerned, and I am bound to say that the two great universities in Pittsburgh and Philadelphia have evinced a power to call to their aid potent influence in the legislative bodies which have never failed them and which may not fail them again. Moreover, I would call the attention of Mr. Pepper to the fact that he is making the whole of this proposed amendment dependent upon the question of the creation of these universities to take the place of the private universities; but there are other institutions of private education to which in the meantime there would be appropriations made if the policy of the past is to be followed. Let me read the proposed educational clause in the constitution which we will come to after a while and which itself ought to be modified some. "Laws shall be enacted providing for the operation and maintenance of an educational system for the commonwealth. This shall include free elementary, secondary and vocational education for all children of the commonwealth and free mental and vocational education for persons mentally or physically handicapped, free education in American citizenship for adults, schools for the training of teachers, a system of public libraries, one or more universities, and such other educational institutions and agencies as may be wise and necessary for the improvement of the citizenship of the commonwealth." With a proposition like that in the constitution, with a command for the establishment of one or more universities, it seems to me that it would be bad fundamental law to allow a public economic question like the sacredness of the school fund to be dependent upon the legislature substituting other universities to take the place of those who now receive the appropriations. I fear, I fear, sir, the dangerous effect of that appropriation every two years going to Pittsburgh and to Philadelphia. The influence of many kinds, the influence of capital, the influence of social standing, the influence of church persuasion, the influence of powerful political bodies, all could from time to time continue these appropriations, unless it is interdicted at a particular moment, and put off the time of the creation of the state universities. It seems to me, therefore, a good policy requires that there should be a definite time fixed, and I hope, therefore, that Mr. Pepper's amendment to my amendment will not prevail.

Mr. THORPE. Mr. Chairman: This brings up a question that has not been settled, though latent throughout the discussion. Mr. Chairman, might it not be asked to carry out an idea consistent with Mr. Pepper whether education as a process for the benefit of the public is divisible into sections and parts, periods and terms? Does not education possess a unit in itself, whether the money is expended for

what the learned has just read as elementary, vocational, secondary, whether it is expended for public schools, or for nurses, or whether it is expended for the education of men and women who shall have important functions and services in and for the commonwealth? I think, Mr. Chairman, that the commission is justified in pausing to consider whether education is to be split into sections, so much for this, and so much for that, and if you can not have this, you can not have that. It is a curious conclusion that here in Pennsylvania education stops with the public schools, and after that it is a luxury that people ought to have to pay for, or it is not worth having, or it is not worth having if it is not paid for privately; that it is not worth having if paid by the state; because it carries in its train some disadvantages and infelicities. Mr. Chairman, we must turn to the experience of states of the union which do not think so. There are great states in the union like Wisconsin, Minnesota, California and others that have taken a position not entirely negligible. Massachusetts, by its recent convention, ruled out appropriations for all educational and charitable institutions that are not under and controlled by the state. The convention which met in Boston a year or two ago did that very thing, and I was conversing with a distinguished member of that convention, the chairman of several of the committees, a judge on the bench, who thought that that was a long-desired and very beneficial conclusion. But, Mr. Chairman, here in Pennsylvania we are in a condition where we do not have the institutions which quite comply with the theory which the learned judge here speaks of. We have public schools inadequately provided for; but are we to conclude because we have inadequately provided for public schools, therefore we shall not have higher education provided for in the commonwealth? Does it follow because you do justice to the common schools that you can not do something for the higher education? Is that logical? It is not that the University of Pittsburgh or the University of Pennsylvania or State College is doing a work that is not beneficial to the state. Why is not that group of persons, comprising in the aggregate perhaps sixteen thousand persons with a possible increase many times that number, is it not possible that out of those thousands that come to the state, men and women in service, who do for the state all that could be expected, even more than could be expected, and services which no state could possibly pay for if it would have to pay in money, and a higher career that was made possible by the state? It is a question of opportunity, Mr. Chairman, it is not a question of the University of Pennsylvania, it is not a question of the University of Pittsburgh; it is a question of opportunity. Call it a state university, whether it is three-fold, or whether it is in one place, it is a question for the future to decide. It is an opportunity. Shall that opportunity cease with the public school system, or shall the opportunity be continued for a higher education, or shall we here as a group of men in the year 1920 stop at this point as to education, that the system is not homogenous, therefore education is not a unit after the public school system is passed, and that thereafter the commonwealth has no interest whatever? Or shall we say we will make it possible for the young people of the commonwealth of Pennsylvania to get special training by recognizing that training and providing for it in one or more universities? It is not a case of the University of Pittsburgh or the University of Pennsylvania, but a case of the state of Pennsyl-

vania making use of the opportunities which it has. And is it not germane to say some appropriations had to go to institutions which possibly you might not approve of? Suppose you do a little wrong, if it be a wrong, would that affect a great right? If the money were appropriated by political, church or social influence, as was referred to, does it do any harm, does it work to the injury of the commonwealth, is it a precedent that is going to produce evil in the commonwealth which generations hereafter will lament? I think not. I think we ought to take a large view of this thing. It is a commonwealth proposition all along the line. The language of the section here concerns persons educated in American citizenship, "adults." This is the first time the word has ever been used in Pennsylvania. We are not going to stop in childhood, we are going on through life by making opportunity for the man or woman who wants to know.

Mr. GORDON. In answer to Dr. Thorpe, I wish to say that the article in the constitution requires that the state shall provide for one or more state universities. Now, there are two private universities receiving state money. After 1928 they should receive no more, and by that time there should be established one or more state universities which would get the state money. I think it would expand and grow into great state universities established by the state and directed by the state, and from time to time they might increase in number as the exigencies of the population of the state increase, and as its wealth increases. I am amazed that Dr. Thorpe should think my amendment has in view to cut off higher education, but I would have the state do directly for its adult citizens, or for its young men and women in higher education, that which is now turned over to a private agency to do. Let the state educate its children itself, and do it openly under the provisions of general law and let it be an education that shall be in every sense a free, public, state education like the money which supports it.

Mr. McCORMICK. I think we would make a grave mistake if we did not fix a date at which this would become operative. These three great state institutions would naturally create a most important situation as to whether they should be combined as one state institution, or whether one of them would be selected as the state university. There would naturally be considerable discussion and agitation, and with the powerful influences behind each of the separate institutions this question might drag on for many years. It might be a difficult matter for the legislature to determine, and I think it is very important to insert the date at which time these institutions will cease to receive state aid, because that will hasten the time when they will make up their minds as to what position they desire to take, as to whether they shall continue as privately controlled institutions, or offer the state their entire plants. I notice in the discussion of these institutions that State College has always been classed as a private corporation. That surprised me a good deal. I have been serving as a member of that board for some years, and I have always considered that we were absolutely out and out a state institution. Every cent of money we get for our institution comes from the state, with the exception of the money we get from the land grant act of the United States government, and I think by the grace of the state, we are automatically a state institution, because the state appropriates every cent of money for our buildings and our maintenance, except

the money we get from the United States government, and I think, therefore, that in considering the subject, State College should be looked upon in a different class than the other educational institutions of the state. I feel very strongly that the date should be set at a reasonable time in which adjustment can be made so that this amendment becomes operative at a specific time.

Mr. CARSON. This amendment seems to me to be in substance a reopening of that debate which we had reason to believe had been closed and settled. It does seem to me that the gentlemen, however urgent and firmly convinced in their own minds they are—I do not challenge their sincerity and faith—are simply insisting on the general axiom that this is the people's money and that therefore it should be expended by the people's representatives alone and are carrying their faith in that general proposition, which perhaps can not be challenged, to such an extent that they prefer theoretical excellence to turning, as practical men should, to a contemplation of such a radical change in existing institutions, and some of which have existed in this commonwealth for nigh two hundred years, solely to satisfy themselves intellectually that the institutions receiving state funds are purely under state management. Now, the first fight was on the general doctrine as to what charities should be included within the reach of state appropriations. We fought that out, and we settled on a principle. It was not satisfactory to the gentlemen, but they accepted the adverse vote of the commission as final. Now here is a re-opening of it under another form, namely, that at a certain time, which is not so very far in the future, a battle-ax falls with sufficient weight and wielded by sufficient authority to dash out the brains of struggling but tremendous forces which have always been enlisted in behalf of the good of the commonwealth, not to its injury, and that those agencies of civilization and beneficence and education shall be absolutely obliterated and their future usefulness destroyed, unless perhaps a sufficient number of citizens, shuddering at the prospect, have the foresight and the means to gather themselves together within this short time and by private subscription rescue an institution hitherto aided, not supported, but aided simply by a timely appropriation so as to avoid absolute extinction. Now, look at the possibilities. Put in a date that on and after the first of January, 1926, or 1928, I do not know which it is, but we will take it as 1928, no appropriation shall be made, and so on. What an unseemly amount of haste we will observe in a race between institutions to get in on the state appropriation before the door is absolutely closed against them! There is where your pull and your influence in competition for appropriations will take place. I do not know what the practical dangers are which Judge Gordon has in mind when he talks about the evil influence, or the insiduous influences of power, capital, social, political, and so on. I do not know any institution that is run on such lines. The University of Pennsylvania, the University of Pittsburgh, State College, or any of the splendid institutions in the list of beneficiaries of former grants of the largess of the commonwealth are not to be arraigned at the bar of public judgment as being in the hands of private interest, selfish or self-seeking or discriminatory in their exercise of the distribution of its benefits. I think the gentleman is simply striking at some figure in the air, which, while he can not exactly define, he sees ghosts stalking outside in the moonlight that do not exist in point of fact.

Now, see what other states of the Union do, and see the possibility —I just happen to have on my desk, sent me by somebody who was not at all apprehensive of any such discussion as this coming up; but he finds that the following states give aid by public appropriation to societies for the publications of the societies themselves. For instance, the state of Connecticut, for the collections of the Connecticut Historical Society; Illinois, to the Historical Society for its Journal; Indiana, to the Indiana Horticultural Society for its Transactions; Iowa, for the Proceedings of the Iowa Academy of Sciences, to the Historical Society for the Iowa Journal of History and Politics and Palimpsest; Kansas, to the Academy of Sciences for its Transactions, to the Horticultural Society for its Bulletin; Kentucky, to the Historical Society for its Register; Minnesota, to the Historical Society for The Minnesota History Bulletin; Missouri, to the Historical Society for the Missouri Historical Review; New Hampshire, to the Historical Society; New Jersey, to the New Jersey State Horticultural Society for its Proceedings; New Mexico, for the Museum for El Palacio, the Journal of the Museum of New Mexico; Ohio, to the Archaeological and Historical Society for its Quarterly; Oklahoma, to the Historical Society for Historia, a Quarterly; Wisconsin, to the Historical Society for the Wisconsin Magazine of History and Bulletin of Information, to the Horticultural Society for Wisconsin Horticulture, to the Wisconsin Archaeological Society for the Wisconsin Archaeologist; Wyoming, to the Wyoming Historical Society for its Miscellanies.

Now, there is a list which illustrates the problem. Those states encourage the collection of documents of information, of scientific papers, of exhibits relating to fauna and flora and the history of these various states, because it is only by the collection of such material that you place within the reach of scholars or students instruments for their advancement and development. Are you going to wipe out of existence absolutely and destroy the hope of some of these institutions, institutions which for years have done work which the commonwealth has not done, and has neglected to do, and which you can not teach the importance of doing without carrying your propaganda of education through such an indefinite course of years that it fails to reach practical results? Suppose, for instance, just as it comes to me, the American Philosophical Society or the Historical Society of Pennsylvania, the Historical Society of Western Pennsylvania, and other institutions up in Wilkes-Barre, and so on, had absolutely neglected the collection of their material. Where would we be as to the possession of certain indispensable documents which illustrate our history and which serve as an inspiration for the future education of citizens? Are you going to wipe that all out, and say, Gentlemen, we fix a date in 1928 when every one of you who are anxious to sustain yourselves by the aid of the state must be diligent and get in on the state funds, or otherwise your enterprise ceases, your former source of revenue, of sustenance and encouragement will dry up and drought take place? In order to do what? To satisfy a theory that unless it is purely and absolutely in all its management and administrative organization a state institution not a dollar of encouragement shall ever come from the state treasury, and not a penny of aid shall be extended. Talk about your practical results! We are not theorists, we are not dwelling in the clouds, we are dwelling here in the midst

of human history with all the impressions of human nature; but, at the same time, with all our splendid traditions, all our dreams, all our achievements behind us, and you want to say to the men and to the women who have unselfishly done that which the state could not do, that which I am free to say the representatives of the state in public life had not the vision to imagine ought to be done; don't wipe that out of existence and say, well now, we have got ourselves on the basis of a principle which is free from any attacks, because it says the people's money shall only be expended by the people's representatives. How are those representatives to gauge the need of what the institutions of the state in the past have done? I say there is not a man in public life, I do not care how broad his education is, or how many societies he belongs to, who can sit down and estimate the amount of actual damage that will be done. You might as well set all your coal mines on fire and have a subterranean conflagration reaching through this state as to say the dirge will be played and that on a certain date in 1928, instead of the skies being bright with hope, they will be darkened by the red clouds of destruction and conflagration. I do not believe, sir, in re-opening this question which we adopted and which we settled some months ago.

Mr. PEPPER. Mr. Chairman: I should like to say a word at this stage of the debate upon what I understand to be the pending question, and that is my resolution to make a certain change in Judge Gordon's proposal. I am not in the position of one who desires to plead for an opportunity for the institution of which I happen to be an alumnus and trustee, the University of Pennsylvania, to make application for grants of public funds. I am rather in the position of one who wishes to make clear to this commission, if I can, two things. One is that the public funds are now being appropriated as the price of making possible higher education in Pennsylvania through institutions which happen to be privately controlled and in part privately supported. Where there is no opportunity for higher education in Pennsylvania elsewhere than in those institutions for students who desire to secure their higher education within the confines of the commonwealth; and in the second place to call attention to the fact that if these appropriations are rendered impossible it does not mean, and in this respect, I can not quite agree with General Carson, but it does not mean that these institutions will cease to exist or will be driven into bankruptcy, but it does mean that they will cease to be organs of public instruction. They will be forced into the category of institutions for private education. That is to say, that they will have to cut off the free educational service which they are now rendering, and they will have to do it, because in that event the education which they afford will be available only for those who can support them. As I said a moment ago, I will not raise my voice because it is my desire that opportunity will be given to the University of Pennsylvania or any other institutions who apply for grants of state funds, but I am most desirous that higher education in Pennsylvania shall not be put out of the reach of the youth of this commonwealth by cutting off the means of such education and opportunities of the system of public instruction until the commonwealth shall have made adequate provision for its own; and I should like to make what little contribution I can to the task of rescuing this commission from doing such a perfectly unintelligent and futile thing as

it would do if it were to pass the amendment as proposed by Judge Gordon. It is not possible that such a thing could ever become part of the organic law. You could not possibly get the people of Pennsylvania to approve a measure which without providing adequately for higher education as part of the system of public instruction made it impossible for the institutions privately controlled to dispense such education. Gentlemen seem to be unaware of the progress of events in the educational world. There is going on in the state of Pennsylvania at the present time a great movement of public opinion on the subject of education. It is absolutely certain in my judgment that the state of Pennsylvania will before long, and when I say before long, I do not mean to set dates, 1924 or 1926 or 1928 or 1930, but soon, engage in higher education as a function of government to crown this system of public instruction. I have my own views as to whether existing institutions, or any of them, will have a place in that system when it shall be developed. Such institutions as do not have a place in that system will necessarily become institutions of purely private education, privately controlled and privately supported, for it goes without saying that the instant that the commonwealth of Pennsylvania goes into the business of higher education on its own account, the demands of that system will be so vast that there will be no money to appropriate to institutions of higher learning that are not the organs of the commonwealth. The proposal that we are asked to pass upon is a proposal to set a date to a movement of the public mind. We are asked to say by constitutional enactment that the commonwealth of Pennsylvania must have settled this great educational problem prior to 1926 or 1928 or 1930. We are told that a process, which is just as natural, and just as normal, just as indestructible, and just as uncontrollable by legislatures or constitutions, must be completed by a certain date, which we guess at. It is a mere guess. The first guess was 1926, and when somebody said, "Let us guess 1928," the gentleman said, "All right, I will move my guess, I guess 1928." It would have been just as bad if he had said 1929 or 1930. You can not set legislative or constitutional dates as to the limit within which a great revolutionary process in education is going to be complete. It is unintelligent to try. You stultify yourself when you try. The thing to do is to recognize that the question is before the minds of the commonwealth. The point is that you must specify what is to happen from and after the time that the commonwealth has made up its mind, from and after the time that the commonwealth makes up its mind to establish a state university and does so. Whether it is a new institution, or whether it grows out of State College, whether it grows out of the University of Pennsylvania, the University of Pittsburgh, or a combination of all three or some two of them, is relatively immaterial. From and after the time the institution is established by the action of the commonwealth, from that moment the commonwealth should withdraw its appropriation for higher education in the state. From that moment it must concentrate all its resources upon the doing adequately of a great task which it shall have undertaken. It is scientific and intelligible to say that the aid to institutions privately controlled to perform a function of the state shall be withdrawn when the state undertakes to perform its own functions. It is unintelligent to say that by 1928, or any date, this question shall be decided, no matter whether the

educational mind of the commonwealth is ready for it or not. It must be decided, and decided by then stopping all public instructions in higher education, and taking a chance that it will be found possible by a process of coercion or hot-bed development to have made provision in some other way for a substitute for the resources that you are destroying. So I beg the commission not to do anything so unintelligent as to attempt to control an evolution of this sort by fixing a date within which its thinking must be complete and its action taken. Let us recognize that we are moving, as I believe, inevitably in the direction of state education in its higher realms, the commonwealth of Pennsylvania crowning its educational system; and let us recognize the thing to do is to declare that when and as this step in public policy is taken by the commonwealth the appropriations by the commonwealth to the institutions privately controlled must cease. I press the amendment which I had the honor to propose.

Mr. FISHER. Mr. Chairman: This principle in its application to charitable institutions of the state was debated and defeated. It is now raised, and it is proposed to apply it to the educational institutions of the state. It seems to me that it ought to be defeated now for the same reason it was defeated in connection with the charities. It is objected to giving state aid to private educational institutions, that public money ought not to be given to private institutions. Now, is that sound doctrine? If the money appropriated for a private, selfish purpose, yes; but if it be appropriated for the accomplishment of some public good, the question is quite different. What is the situation here? We have now set up in our proposed frame of government a splendid scheme for a complete system of education. That system is complete from the most elementary grade until it is capped by university training. The time was within the memory of most of us, and particularly those who were reared in the country, when the prevalent notion was that the public had performed its duty in the matter of education, when it had supplied what we called a "common-school education." There was a deep-seated feeling in the minds of the people that beyond that point education should be paid for privately, that nobody had a right to be educated in the higher branches or in the professions at the expense of the public. But thought on this subject has undergone an evolution. We see now that such ideas, the ideas of our fathers, were too restricted; that the state owes it as a duty to give the opportunity to all of its youth to attain a completed education. Now, if that idea be correct, it is the duty of the state to supply university training. How are we going to do it under existing conditions? The state has been remiss in not establishing its own institutions of higher learning. Therefore, in order to perform its functions, the state has been obliged to go to these institutions which are in existence and buy the service from them which it failed to furnish. That is the problem as it presents itself to my mind. Now, if it be the duty of the state to provide higher education, how are we going to do it if we snuff out these appropriations at a given period and do not provide the institutions for the accomplishment of this purpose at the expense of the state? We have no means here proposed. We can insert no power in this constitution that will compel action on the part of the legislature. We must meet a practical situation as it exists. Suppose we say that these appropriations shall be shut off in 1928, that is an arbitrary date. What will happen? Why,

as has been pointed out, the institutions will simply refuse to function in these respects after that date, and then the young men and young women who are dependent upon their opportunities for education will be thrown out. It is ridiculous to say that an ambitious boy or girl today without financial means can secure training in institutions of higher learning without public help.

Mr. CARSON. They would be thrown out four years in advance; they would be thrown out before reaching their senior year.

Mr. FISHER. Just so. Now, how will the state benefit? I am not a university man, and know little about the university, but I have the notion that these universities are training men and women in medicine, in law, in dentistry, in forestry, if you please, in other special lines demanding a special kind of training, and that they will go out from these institutions and repay the public by the more efficient and more intelligent service which they can give in return. That is, pay to the commonwealth in specialized service for what the commonwealth has done for them. That is the justification for university education at public expense.

Now, shall we deny the boys and girls of Pennsylvania these opportunities? If the motion made by Mr. Pepper prevails, they will not be denied. There will be no interim during which the door to higher learning will be closed to them. We must either accept his proposition, or we must say to the legislature that they shall provide a university within a fixed time and make it 1926, or we say to the boys and girls, "You can no longer have the advantages of higher education." Are we going to shut our eyes to these practical problems in order to sustain a theory? If we were to start anew and were planning from the very beginning, I would be heart and soul with Judge Gordon, because then we could meet all problems. We could plan ahead for them. We could take care of these conditions and emergencies as they arise. But that is not the situation here, and for that reason I believe that Judge Gordon's motion should not prevail.

Mr. GORDON. However this matter may be decided, I should like it to be decided upon the real question which is the foundation of the amendment I have offered. One would suppose from the remarks of Mr. Carson and the remarks of Senator Fisher that those who offered that amendment were opposed to the state giving higher education to the young men and young women of the state. The exact contrary is true. This amendment has its birth its origin and its justification solely in the principle that it is the duty of the state to provide universities for the higher education of the children of the state. Do not let this question go off for a moment upon any such a tactful argument as that of Mr. Fisher or General Carson. All of us who offered this amendment want the state to have great universities, the equal of any now in existence, if possible superior to them, so that all the higher education desired by the children of the state may be obtained by them at the state's institutions. Now, that being so, and Mr. Carson, Mr. Pepper and Mr. Fisher all being in favor of the state giving higher education to its young men and its young women, they are therefore with me in principle ostensibly with me in principle that the state should furnish this higher education, and our educational program which we have adopted requires the establishment of these universities giving the higher education. What then? Mr. Pepper is opposed to the fixing

of a date when appropriations to private institutions shall cease. This is the subject of my story then. When shall the state cease to make appropriations to private institutions of higher learning? Mr. Pepper says you should not cease it or you should cease it only when you have got your universities equal to those now existing which derive these appropriations of public money. Hence he says instead of fixing a definite time fix no time, or rather fix a time when something shall happen that may never happen; something shall happen which may counteract the influence of those who are not in favor of the underlying purposes of this amendment, of the underlying purposes of the educational system established by the state. If the next session of the legislature should in accordance with the recommendation of this body call a constitutional convention, and if the constitutional convention should adopt in substance that which we have adopted, it could then be submitted to a vote of the people and that constitution could be in operation in 1923. It will be in operation in 1923 if it is ever in operation. If it is not in operation then, it never will be. I mean our work will be in the waste-paper basket, or it will be in operation in 1923. And there will then be left five years within which appropriations may be continued to private educational institutions, the University of Pittsburgh, the University of Pennsylvania, and at the end of five years the legislature will have done its duty, I say. The gentlemen who are now opposed to this amendment I have heard in the past oppose other amendments on the ground that you must trust to the legislature, you must trust to its fidelity, to its oath, to its high principles and its patriotism. Why shall we not believe that in five years, that is from 1923, the establishment of the university of the state will be so far forward that there will be no substantial depreciation, no substantial diminution of giving the means of higher education to all the children of the state who desire it? But it will only come if you cut off the appropriations to these two great institutions at the east and the west. But is this aimed at these two institutions? Not at all, not at all. This amendment is aimed at the principle of allowing any state education, any education from state funds, to be under private control; and so long as the University of Pennsylvania and so long as the University of Pittsburgh are the recipients of public money for educational purposes, so long the door stands invitingly open for all other applications which may have plausibility or other power behind them.

Now the University of Pennsylvania, its representative to some extent, Mr. Pepper, says is not in danger of bankruptcy if the appropriation is withdrawn. Certainly it is not. Mr. Carson intimated that I was making some imputation against the management of the university when I referred to certain influences it could command. I was not. But I was referring to its potency in legislative halls when it desired appropriations. It could bring to bear in Harrisburg and in Philadelphia the most powerful and persuasive influences, the most alluring, emphatic and effective influences. It always has been able to do it. Mr. Carson has seen and probably has helped to have acres and acres of public land in the city of Philadelphia handed over to the University of Pennsylvania and to other most beneficial things. I saw when I was a member of this body, and I have observed since then as a citizen interested in public

affairs at every session of the legislature, the most powerful influences for appropriations to this institution and for appropriations for the University of Pittsburgh. I have no objections to that. They do it, of course they do it, as long as they have appropriations. I do not say dishonestly or corruptly, but as long as these influences are exerted effectively, Mr. Chairman, nothing will be done in this direction unless a date is fixed. The debate heretofore did not touch public education, but touched mainly and almost entirely appropriations to charities, and they related to scores and scores of charities that undoubtedly were doing a great public good. There was an appeal to the human heart, there was an appeal in behalf of human suffering that was very potent, and therefore private charities will receive and may receive in the future public aid. There are two great universities now receiving these appropriations. Let us stop now. It is easier to cut off these great universities that can stand on their own feet from public charity, easier to do that without any ill result than it will be later for us to pass such a constitutional amendment, when there are other recipients of the bounty of the state for private education.

Mr. TYSON. Mr. Chairman: It seems to me that if the amendment proposed by Mr. Pepper shall prevail, it would serve to array against the establishment of state universities all those who might be opposed to the principle as expressed in Judge Gordon's amendment, and for that reason it seems to me much better that a definite date be fixed for the discontinuance of state appropriations to privately owned educational institutions.

Mr. CARSON. Might I arise to just ask for information It seems to me that those who think as I do ought to do one thing. We ought to vote for Mr. Pepper's amendment, and then we ought to vote down Judge Gordon's proposition entirely as amended. That is the way I shall vote.

Mr. GORDON. You are incorrigibly right.

On the question recurring,

Will the commission agree to the amendment?

It was agreed to.

On the question,

Will the commission agree to the amendment as amended?

Mr. CARSON. Now I hope that will be defeated.

The CHAIRMAN. As Mr. Pepper has amended it, the secretary will read.

The SECRETARY. "After the establishment of one or more state universities no appropriations for educational purposes shall be made by the state government to a corporation, association or institution or to a class of corporations, associations or institutions not under the absolute control of the state government or of a municipality."

Mr. GORDON. Mr. Chairman: I sincerely hope that this amendment will pass, much as I criticised the amendment when Mr. Pepper offered it. Now that it has been adopted it will be a step in advance, it seems to me, in constructive statesmanship to accept half a loaf even if we cannot get the whole. I therefore sincerely hope that the amendment will pass, and I hope the university will be established in five years, in which event all appropriations to private institutions will cease.

Mr. McCORMICK. May we have an aye and nay vote on that question?

On the question recurring,

Will the commission agree to the amendment as amended?

Thirteen gentlemen voted in the affirmative and seven in the negative, and the amendment was adopted.

On the question,

Will the commission agree to the section as amended?

Mr. McCORMICK. Mr. Chairman: In the discussion of this section in the committee of the whole final action was taken in the committee in regard to appropriations to charities. I do not understand, however, as was stated here, that that was the final action of the commission, because I assumed that on all questions of this importance we would have an opportunity to discuss with ourselves and to think over it during the intervening weeks before we finally passed upon these various questions, and I do hope that the members in their deliberation of these great questions of principle upon which they were finally going upon record would realize the importance of the question, not only in regard to its application to education, but in regard to its application to charitable institutions. Therefore I reserve the right to present at this time again this question of principle in regard to the granting of appropriations to charitable institutions not under state control. I therefore would like to offer without any further discussion, because, I think the principle is absolutely similar in regard to charitable institutions as it is to educational institutions, and as one has been adopted I hope the other may be adopted. I therefore offer the following amendment: Amend by adding to the end of the section the following paragraph: "On and after the year 1932 no appropriations shall be made to any charitable institution not absolutely under the control of the commonwealth."

Mr. GORDON. Mr. Chairman: I second the amendment.

On the question,

Will the commission agree to the amendment?

Mr. McCORMICK. If there is no debate, I would like to call for an aye and nay vote on that question.

Mr. PEPPER. Might that be read again, Mr. Chairman?

The CHAIRMAN. Certainly Mr. Pepper. Will Mr. McCormick kindly read the amendment again.

Mr. McCORMICK. "On and after the year 1932, that gives, I think, five or six legislatures intervening, "no appropriations shall be made to any charitable institution not absolutely under the control of the commonwealth." I would accept, if you prefer, the exact wording of Judge Gordon's amendment, if it is preferred in the matter of language and phraseology; but I would want to insert the date 1932 as the period at which charitable appropriations should cease to institutions not under the control of the state.

On the question recurring,

Will the commission agree to the amendment?

Six members voting in the affirmative and fourteen in the negative, the amendment was not agreed to.

On the question recurring,

Will the commission agree to the section as amended?

Mr. GORDON. Mr. Chairman: As a matter of uniformity in

language I move to strike out the word "commonwealth" in the third line of the first part of the section and insert the words "state government."

The CHAIRMAN. Is there any objection?

Mr. FISHER. I would say that "commonwealth" is more commonly used in the draft than "state government," although we have violated our rule of style in that respect.

Mr. GORDON. This amendment was acted upon by the members of the committee on style.

Mr. FISHER. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question recurring,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE III, SECTION 26-C.

The commission resumed consideration of section 26-C of article III.

The secretary read the section as follows:

LOCAL AND SPECIAL LAWS FORBIDDEN.

1 Section 26-C. No local or special law shall be enacted:
2 (a) Regulating the affairs of a municipality;
3 (b) Changing the names of persons or places;
4 (c) For the creation or regulation of highways, ferries or bridges, except
5 bridges across streams which form state boundaries;
6 (d) Regulating cemeteries or public grounds not belonging to the common-
7 wealth;
8 (e) Granting divorce or authorizing the adoption or legitimation of children;
9 (f) Regulating elections other than those relating to constitutional conven-
10 tions, except that laws regulating the registration of electors may be applied
11 to cities or boroughs of a specified class only;
12 (g) Regulating the organization of a court or the administration of jus-
13 tice;
14 (h) Regulating liens, the collection of debts or the effect of judicial sales of
15 real estate;
16 (i) Regulating schools;
17 (j) Fixing the rate of interest, except that laws may be enacted permitting
18 classes of associations and corporations to pay a higher rate of interest than
19 individuals;
20 (k) Regulating the estate of decedents, minors or persons under disability;
21 (l) Regulating labor, trade, mining or manufacturing;
22 (m) Creating corporations, or amending, renewing or extending their char-
23 ters;
24 (n) Granting a benefit, privilege or power.
25 No local or special law shall be indirectly enacted by the partial repeal of a
26 general law. Laws repealing local or special laws may be enacted.

On the question recurring,

Will the commission agree to the section?

SECTION POSTPONED.

The CHAIRMAN. It is the understanding of the chair that it is the desire of the commission to give some consideration to this special legislation section, and this section should go over until tomorrow morning when a further draft will be presented. Is there any objection? The chair hears no objection, and consideration of this section will be postponed until tomorrow morning.

ARTICLE V, SECTION 16-B.

The commission proceeded to the consideration of section 16-B of article V.

The secretary read the section as follows:

DETERMINING PRIORITY.

1 Section 16-B. Before two or more judges of the same court begin service on
2 the same day, they shall cast lots to determine who shall be deemed first to have
3 begun service and shall certify the result to the governor.

On the question,

Will the commission agree to the section?

Mr. THORPE. Mr. Chairman: Just a question. Is it clear who shall do this certification, who shall certify the results?

Mr. REED. They always had in the old constitution.

The CHAIRMAN. That is so; it is in the present constitution.

Mr. THORPE. Then it is perfectly clear what it is, of course.

On the question recurring,

Will the commission agree to the section?

It was agreed to.

ARTICLE V, SECTION 16-C.

The commission proceeded to the consideration of section 16-C of article V.

The secretary read the section as follows:

RESIDENCE OF JUDGES.

1 Section 16-C. The judges of the supreme court and of the superior court
2 shall reside in the state. A judge of another court or a justice of the peace shall
3 reside in the district from which he has been elected.

On the question,

Will the commission agree to the section?

Mr. GORDON. Mr. Chairman: I move to strike out the word "from" in the third line and insert the word "for," "shall reside in the district for which he is elected." Or, if anybody prefers, "in the district in which he is elected." The old constitution had "for" in place of "from."

The CHAIRMAN. Is there any objection to the change in language? The chair hears none, and the change will be made.

On the question recurring,

Will the commission agree to the section?

It was agreed to.

ARTICLE V, SECTION 18.

The commission proceeded to the consideration of section 18 of article V.

The secretary read the section as follows:

COMPENSATION OF JUDGES AND OF JUSTICES OF THE PEACE.

1 Section 18. A judge or a justice of the peace required to be learned in the
2 law shall receive for his services a salary prescribed by law, and no other
3 compensation. A judge required to be learned in the law shall be paid by the
4 state government.

On the question,

Will the commission agree to the section?

Mr. FOX. Mr. Chairman: I desire to amend by striking out the article "a" in line two and substituting "an adequate." It is re-inserting the words of the present constitution.

Mr. GORDON. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE V, SECTION 21.

The commission proceeded to the consideration of section 21 of article V.

The secretary read the section as follows:

DUTIES OF COURTS TO BE JUDICIAL ONLY.

1 Section 21. No duties shall be imposed on a court or judge except such as
2 relate to administration of justice, to the conduct of the business of the court,
3 or to the conduct of elections. After the adjournment of the first session of
4 the general assembly following the time when this constitution becomes effective,
5 no powers of appointment shall be exercised by a court or judge except such as
6 relate to their duties or to the management or public law libraries, the inspec-
7 tion and management of prisons, the visitations of public institutions, the con-
8 demnation of private property, and the administration of public trusts, or public
9 parks or of public works. Other powers of appointment vested in a court or judge
10 shall be abolished or vested elsewhere by law.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE V, SECTION 21-B.

The commission proceeded to the consideration of section 21-B of article V.

The secretary read the section as follows:

APPEALS TO SUPREME COURT IN HOMICIDE CASES.

1 Section 21-B. A person sentenced for felonious homicide may remove the
2 indictment, record and all proceedings to the supreme court for review.

On the question,

Will the commission agree to the section?

Mr. FISHER. Mr. Chairman: The new section submitted does not provide appeals in criminal cases other than felonious homicides. I do not know who is responsible for this change, or whether there is any particular reason for it.

The CHAIRMAN. Appeals to the supreme court, as I understand it; that is the law today. Subject to special allowance, appeals in criminal cases are taken to the superior court, and only on special allowance, I believe, to the supreme court; but no appeals in criminal cases go to the supreme court, or in homicide cases directly to the supreme court. This fixes it constitutionally and permits homicide cases to be appealed to the supreme court.

On the question recurring,

Will the commission agree to the section?

It was agreed to.

ARTICLE V, SECTION 21-C.

The commission proceeded to the consideration of section 21-C of article V.

The secretary read the section as follows:

APPEALS FROM COURTS NOT OF RECORD.

1 Section 21-C. A person summarily convicted, or a party to a suit for a
2 penalty before a justice of the peace or in a court not of record, may appeal to a
3 court of record in the manner prescribed by law.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE V, SECTION 27-A.

The commission proceeded to the consideration of section 27-A of article V.

The secretary read the section as follows:

EMPLOYMENT OF COUNSEL FOR POOR PERSONS.

1 Section 27-A. Laws shall be enacted applicable to courts of record and to
2 such other courts as may be deemed proper, providing for the employment of
3 counsel who shall be paid by the county under an order of court, and also for
4 relief from the payment of the costs of litigation in the case of litigants in such
5 courts who shall be unable without great hardship to employ counsel or to pay
6 costs, or either. The costs of litigation may be classified or graded by law
7 according to the amounts in controversy.

On the question,

Will the commission agree to the section?

Mr. GORDON. Mr. Chairman: I desire to strike out a part of this section which is now unnecessary and in conflict with the section of the article which gives to the supreme court the power to regulate the appointment of counsel without charge in certain cases. I therefore move to strike out all after the word "providing" in the second line down to the end of the sentence in line six, ending with the word "either," and insert instead thereof these words, "that the counties shall compensate counsel assigned to serve without expense to litigants," so that the sentence will read, "Laws shall be enacted applicable to courts of record and to such other courts as may be proper, and providing that counties shall compensate counsel assigned to serve without expense to litigants." The assignment is to be made under rules promulgated by the supreme court, and those rules, when promulgated, are to have the force of statutes. Hence this provision which I ask to strike out is in conflict with that provision of the constitution which we have already adopted. I accordingly so move.

Mr. REED. Mr. Chairman: I will second the amendment.

The amendment was agreed to.

On the question,

Will the commission agree to the section as amended?

Mr. FISHER. Mr. Chairman: I would like to call attention to the last sentence of this section which provides, "The costs of litigation may be classified or graded by law according to the amounts in controversy." That seems to be a broad provision which may apply to all costs. I do not know whether it was intended to limit the gradation of costs in cases such as are contemplated in this section. If so, we ought to modify it, it seems to me.

The CHAIRMAN. Would not that all be subject to regulation? It has the right to regulate costs. If a controversy is small, the costs should be small.

Mr. FISHER. It gives the supreme court the right to make such regulation.

Mr. GORDON. Oh, no.

Mr. FISHER. It does have that right in another section, does it not?

The CHAIRMAN. I do not know whether it has the right or whether it is strictly applicable to costs.

Mr. FISHER. That is a dangerous provision, inserting a general provision here that may give rise to discrimination in the question of costs. It seems to me the principle is wrong.

Mr. CARSON. Where did it come from, Senator? I do not know exactly how it got in there.

Mr. FISHER. In order to bring the subject before the commission, I move to strike the last sentence out.

The CHAIRMAN. Is that on the theory that the supreme court can regulate the whole proceeding?

Mr. FISHER. My theory is that the supreme court may regulate just such subjects as this.

Mr. GORDON. I think Mr. Fisher is mistaken. I do not think this body would give the supreme court the power to fix costs of litigation. "Laws shall be enacted applicable to courts of record and to such other courts as may be deemed proper, providing that the counties shall compensate counsel assigned to serve without cost to litigants. The costs of litigation may be classified and graded by law according to the amounts in controversy and the legislature shall fix the costs." That is, the legislature shall fix the costs, or grade the costs according to the amounts in controversy. This is a reform that certainly ought to be adopted, for the poor man who is sued for ten dollars ought not to be subject to the same relative costs as the man who is sued for a million dollars.

Mr. CARSON. I was simply going to ask Judge Gordon a question so that I may be clear in my own mind as to this. You mean to classify costs so that the poor man who is sued for five dollars or twenty dollars that he should not be called on to pay two dollars for a writ of summons, and that the legislature might so classify his claim that he could get his writ for fifty cents?

Mr. GORDON. That the person who is sued for ten dollars ought not to pay the same costs as the man who is sued for ten thousand dollars.

Mr. CARSON. That is all right. I think that is proper.

Mr. FISHER. In view of the explanation, I withdraw the amendment.

On the question recurring,

Will the commission agree to the section?

It was agreed to.

ARTICLE VIII, SECTIONS 5, 11, 16-A AND 17-C.

The commission proceeded to the consideration of sections 5, 11, 16-A and 17-C of article VIII.

The secretary read the sections as follows:

PRIVILEGES OF ELECTORS.

1 Section 5. Electors shall, except in cases of treason, felon and breach or
2 surety of the peace, be privileged from arrest during their attendance on elec-
3 tions, and in going to and returning from them.

ELECTION DISTRICTS.

1 Section 11. Townships and wards of cities or boroughs shall form or shall
2 be divided into election districts of compact and contiguous territory as the
3 court of quarter sessions may direct.
4 An election district in a city of over one hundred thousand inhabitants shall
5 be divided by the court of quarter sessions when at the next preceding election
6 more than two hundred and fifty votes have been polled therein. Any other
7 election district shall be divided when the court of quarter sessions shall be of
8 opinion that the convenience of the electors and the public interests will be pro-
9 moted thereby.

TIME OF HOLDING ELECTIONS.

1 Section 16-A. The general election shall be held in each even-numbered year
2 and the municipal election shall be held in each odd-numbered year. Each shall
3 be held on the Tuesday next following the first Monday in November unless,
4 with the consent of two-thirds of the members of each house of the general
5 assembly, a different day shall be prescribed by law.

ELECTIONS BY PERSONS IN REPRESENTATIVE CAPACITY.

1 Section 17-C. Elections by representative bodies shall be viva voce.

On the question,
Will the commission agree to the sections?
They were agreed to.

RECONSIDERATION OF VOTE.

Mr. STEVENS. Before proceeding any further with that section I desire to call attention to section 21-B of article V.

I move that the vote by which this section was passed be reconsidered.

Mr. ENGLISH. I second the motion.

The motion was agreed to.

ARTICLE V, SECTION 21-B.

The commission resumed consideration of section 21-B of article V
The secretary read the section as follows:

APPEALS TO SUPREME COURT IN HOMICIDE CASES.

1 Section 21-B. A person sentenced for felonious homicide may remove the
2 indictment, record and all proceedings to the supreme court for review.

On the question recurring,
Will the commission agree to the section?

Mr. STEVENS. Mr. Chairman: It seems to me that perhaps we were a little hasty in concluding that the provision of the constitution of 1873, which provided that "in such other criminal cases as may be provided for by law, the accused, after conviction and sentence, may remove the indictment" and so forth, is superfluous. It seems to me if we omit that provision entirely we lay ourselves open to have taken the position of making an apparent change in the constitution which may be the subject of considerable litigation, and at least raise the question as to the right of the legislature to pass legislation authorizing appeals in other cases, and it may in addition

interfere with the rights of parties as they now exist, and it seems to me that the section as adopted at the meetings of May 11th, providing for appeals and following the constitution of 1873, should be re-enacted. I call your attention to this for the purpose of having the views of the commission.

I move to substitute for section 21-B as read the language of the section as adopted on May 11, 1920, which is as follows:

"In all cases of felonious homicide the accused, after conviction and sentence, may remove the indictment, record and all proceedings to the supreme court for review, and in such other criminal cases as may be provided for by law the accused, after conviction and sentence, may remove the indictment, record and proceedings to either the superior court or supreme court for review, as the general assembly may provide."

Mr. REED. Mr. Chairman: I will second the motion, and then I want to ask the committee on style why they did it.

The CHAIRMAN. The secretary can answer, I think.

The SECRETARY. As I understand it, the committee on style shortened the section because the additional language which relates to all other cases as may be prescribed by law did not really give any right of appeal. All the substantive constitutional rights in the constitutions as expressed in the present constitution are expressed in the section as reported by the committee. The committee, I assume, thought it better because it is a shorter and more concise language.

Mr. REED. I am asking for information only. The original section was "In all cases of felonious homicide, and in such other criminal cases as may be provided for by law, the accused, after conviction and sentence, may remove the indictment, record and all proceedings to the supreme court for review." Now, the committee on style after using their pruning-knife simply left the man who had been sentenced for felonious homicide with the right of appeal to the supreme court, and apparently did not provide that the supreme court may entertain any other cases. They must have had some reason.

The CHAIRMAN. I remember when it was up in the committee on style it was thought that such appeals should be provided by law. There was no constitutional guarantee of the right to appeal in a criminal case, and in the matter of granting by the legislature of the power to appeal by law. That was the thought in my mind.

Mr. GORDON. That was obviously their thought, and they are correct about it. The only purpose of this is to procure an appeal to the supreme court in cases of felonious homicide. That is all that it is intended to do; but other appeals are statutory and are provided for by law, and will be provided for by law. There is no reason for any constitutional rights on that subject. The legislature has full power to grant appeals in any case.

Mr. REED. After Judge Gordon's lucid explanation of what the committee on style thought, I will withdraw my second to the substitute.

The CHAIRMAN. For want of a second, the substitute falls.

ARTICLE VIII, SECTION 1.

The commission proceeded to the consideration of section 1 of article VIII.

The secretary read the section as follows:

QUALIFICATIONS OF ELECTORS.

1 Section 1. A citizen of the commonwealth shall be entitled to vote at elec-
2 tions who has:
3 1. Reached the age of twenty-one;
4 2. Been a citizen of the United States at least thirty days;
5 3. Resided in the state immediately preceding the election for one year, or,
6 if he is a native of the commonwealth or has been an elector, then for
7 six months immediately preceding the election;
8 4. Resided for sixty days next preceding the election in the election district
8 where he shall offer to vote;
10 5. Complied with the law regulating the registration of electors.
11 The right to vote and to hold office shall not be denied on account of race,
12 color or sex.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE VIII, SECTION 1-B.

The commission proceeded to the consideration of section 1-B of article VIII.

The secretary read the section as follows:

RESIDENCE OF ELECTORS.

1 Section 1-B. For the purpose of voting no person shall be deemed to have
2 gained a residence by reason of his presence or to have lost it by reason of his
3 absence while in the service of the United States of the state government or
4 of a municipality of the commonwealth, or while navigating the waters of the
5 United States, or the high seas, or while a student of an institution of learning,
6 or while kept in an institution at public expense, or while confined in prison.

On the question,

Will the commission agree to the section?

Mr. REED. Mr. Chairman: What kind of absence from a municipality is covered by that? If a man leaves Pittsburgh and goes to Philadelphia and serves the city, he is still in the state. Is he entitled to vote, or must he leave the state or where must he go?

The CHAIRMAN. It is the maintaining of a residence.

On a question recurring,

Will the commission agree to the section?

It was agreed to.

ARTICLE VIII, SECTION 3-C.

The commission proceeded to the consideration of section 3-C of article VIII.

The secretary read the section as follows:

VOTING WHILE ENGAGED IN MILITARY SERVICE.

1 Section 3-C. When an elector shall be absent in the military service of the
2 commonwealth or of the United States under a requisition by the President, he
3 may vote as if he were present in his place of residence, subject to regulations
4 prescribed by law.

On the question,

Will the commission agree to the section?

Mr. FISHER. Mr. Chairman: This section to which I would like to call to the attention of the commission provides for absent voting only in the case of military service. Many of the states provide generally for voting by absentees. I think it is a question which may well be brought to the attention of the commission at this time. I

therefore move to amend by striking out all the words beginning after the word "absent" in the first line up to the word "he" in the second line, so that the clause shall read, "When an elector shall be absent he may vote as if he were present in his place of residence, subject to regulations prescribed by law."

Mr. VOLL. Mr. Chairman: I second that amendment.

The amendment was agreed to.

On the question,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE VIII, SECTION 8.

The commission proceeded to the consideration of section 8 of article VIII.

The secretary read the section as follows:

BRIBERY AT ELECTIONS.—CHALLENGING OF ELECTORS.—VIOLATION OF ELECTION LAWS.—WITNESSES IN CONTESTED ELECTIONS AND ELECTION INVESTIGATIONS.

1 Section 8. A person who shall give, or promise or offer to give a valuable
2 consideration for a vote at an election, or for the withholding thereof, or who
3 shall receive or agree to receive, for himself or for another, a valuable considera-
4 tion for a vote at an election or for the withholding thereof, shall forfeit the
4 right to vote at such election. An elector whose right to vote shall be challenged
6 for such cause before the election officers shall be required to swear or affirm
7 that the subject matter of the challenge is untrue before his vote shall be
8 received.
9 A person convicted of wilful violation of the election law shall, in addition
10 to the penalties prescribed by law, lose for four years the right to vote.
11 In a trial of a contested election and in an investigation of elections, no
12 testimony shall be withheld on the ground that it may criminate the witness or
13 subject him to infamy. Such testimony shall not afterwards be used against
14 him in a judicial proceeding except in a prosecution for perjury in giving such
15 testimony.

On the question,

Will the commission agree to the section?

Mr. GORDON. Mr. Chairman: I desire to amend that section by inserting in line two after the word "consideration" the word "or reward;" lines three and four after the word "consideration," the word "or reward." These words are in the existing constitution and probably are inadvertently omitted in this section now before us; but in any case they ought to be restored.

Mr. McCORMICK. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the commission agree to the section as amended?

It was agreed to.

RECONSIDERATION OF VOTE.

Mr. FISHER. Before we pass from section 3-C of article VIII it seems to me we have left it in a rather defective condition. I should like to move to reconsider the vote by which it was passed and then to make a motion to amend it.

Mr. FOX. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE VIII, SECTION 3-C.

The commission resumed consideration of section 3-C of article VIII.

The secretary read the section as follows:

VOTING WHEN ENGAGED IN MILITARY SERVICE.

1 Section 3-C. When an elector shall be absent in the military service of the
2 commonwealth or of the United States under a requisition by the President, he
3 may vote as if he were present in his place of residence, subject to regulations
4 prescribed by law.

On the question recurring,

Will the commission agree to the section?

Mr. FISHER. Mr. Chairman: I move to insert in the first line after the word "absent" the words "from the commonwealth," so that the section will read: "When an elector shall be absent from the commonwealth he may vote as if he were present in his place of residence, subject to regulations prescribed by law."

The CHAIRMAN. But suppose the militia should be in service in one part of the state but not in their voting place suppose your national guard should be detailed to more than one place of the state. They would be in the commonwealth; and would they have the right to vote?

Mr. FISHER. It occurred to me that if voters were in the commonwealth at the time of election, with our ready means of transportation, they could all go to their voting place. There might be a case of military service where that could not be done.

The CHAIRMAN. If I was away, but within the boundaries of the state, it would be a greater hardship to be denied the right to vote, than it would be to my neighbor, who was five miles away, but beyond the boundaries of the state.

Mr. FISHER. In that view of it I accept the opinion of Mr. Justice of the supreme court and withdraw my amendment and leave the clause stand as it was originally.

Mr. ALTER. Mr. Chairman: As the gentleman has caused the reconsideration of the vote by which his former amendment was inserted, I would like to ask him to give his thought as to why a person who is absent should be provided for any more than a person who is prevented from going to the polls by some physical disability. If I am laid up with a sprained ankle and can not go to the polls, still I am at home, and know what is going on, and have some idea of the issues involved in the election. If I am away out in California and do not know anything that is going on and some friend sends me a ballot and asks me to vote this way or that way, then is it proper for that to be counted? Now, I think I would like to get the thought of the gentleman from Indiana as to whether those who are at home by reason of physical disability and unable to go to the polls might not in justice be provided for in some way.

Mr. FISHER. By omitting the words just submitted "from the commonwealth," it leaves it open to the legislature to provide a mode of receiving the ballot in case of absence for any cause. It will be up to the judgment of the legislature to cover the situation suggested by Mr. Alter.

Mr. REED. I think the whole principle is wrong. If a man is absent on military service then, of course, he is where he is ordered

and he can not get home to vote, but if you are to mail votes from one part of the state to another, what is the use of having an election? Why not mail them all down here and let the authorities count them here in Harrisburg There is some formality about this election business, and people ought to go to a litle trouble to vote if they can.

The CHAIRMAN. Now, the proposition, as I understand it, is that anybody may vote at an election on any question at all.

Mr. FISHER. In the manner prescribed by law.

The CHAIRMAN. According to the regulations prescribed by law.

Mr. REED. Is your honor reading the section? Tell us what it ought to be.

The CHAIRMAN. This has been adopted, and is now for reconsideration. We have reconsidered the vote by which it has been adopted, but there is nothing before the commission now.

Mr. FISHER. I move, Mr. Chairman, its adoption in its amended form. I withdraw my last amendment, and I move its re-adoption in the form in which we voted on it before.

The CHAIRMAN. And it will read how?

Mr. FISHER. "When an elector shall be absent he may vote as if he were present in his place of residence, subject to regulations prescribed by law." The legislature may determine in what case of absence the right shall be exercised and the method by which it shall be exercised.

Mr. ALTER. If the gentlemen has in mind that that will give the legislature the right to provide that one who is detained at his home by illness may be considered as absent, then I am afraid the language is not consistent, because it says he may vote, "When an elector shall be absent he may vote as if he was present in his place of residence." Now, certainly if he is confined to his home he is present at his place of residence and could not derive any benefit under this section.

Mr. REED. How is this absent voter going to register if he is absent from Pittsburgh?

Mr. VOLL. By mail. Quite a number of states provide that voters can register by mail and also cast their ballot by mail. It seems to me that the duty of the government is to encourage every citizen to vote and take part in government, and learn as much as possible of what is going on. He may be absent from the state or from the commonwealth for reasons over which he has no control, and yet he would like to exercise his franchise as a citizen, and it seems to me that it would be encouraging good government to pass this.

Mr. THORPE. I am rather inclined to agree with Judge Reed. Are we going to make elections so easy and cheap and indifferent that you might just as well mail your vote to headquarters and be done with it? The original article has merit if we add the word "naval" as well as military." As I recall, Mr. Chairman, the first instance of this in our country was in Maryland in 1864. I say this just in the way of information, but it is rather characteristic. When the troops were absent from the state and the constitution of Maryland was carried by three hundred twenty-four, a very little state, the militia of Maryland in the field were down south. That was the first illustration in this country. If that applies to the military, why

not extend it to the navy also? It looks to me, Mr. Chairman, as if there are certain features in section 3-C, as the attorney general has referred to, that are very serious. I think that the original article is preferable. We should not make voting too easy.

The CHAIRMAN. Is the gentleman's motion to substitute the section as it appears in the old constitution for the section as it has been adopted

Mr. THORPE. With the addition of the word "naval," including both soldiers and sailors. The section would then read, "Whenever any of the qualified electors of this commonwealth shall be in actual military or naval service, under a requisition from the President of the United States or by the authority of this commonwealth, such electors may exercise the right of suffrage in all elections by the citizens, under such regulations as are or shall be prescribed by law, as fully as if they were present at their usual places of election.

Mr. REED. Mr. Chairman: I second the substitute.

On the question,

Will the commission agree to the substitute?

Eight members voting in the affirmative and three in the negative, the substitute was agreed to.

ARTICLE VIII, SECTION 14.

The commission proceeded to the consideration of section 14 of article VIII.

The secretary read the section as follows:

ELECTION OFFICERS.

1 Section 14. In each election district there shall be an election board con-
2 sisting of a judge and two inspectors chosen by the electors of the district. They
3 shall hold office for two years. Each elector may vote for one candidate for
4 judge and for one candidate for inspector. Vacancies in election boards shall be
5 filed and election boards in new districts shall be created as prescribed by law.
6 Each inspector shall appoint one clerk at each election. An election officer or
7 clerk shall be privileged from arrest upon days of election and while engaged
8 in making up and transmitting returns, except upon warrant of a court of rec-
9 ord or of a judge thereof for election fraud for felony, or wanton breach of the
10 peace. In a city he shall be exempt from jury duty.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE VIII, SECTION 16.

The commission proceeded to the consideration of section 16 of article VIII.

The secretary read the section as follows:

OVERSEERS OF ELECTIONS.

1 Section 16. The courts of common pleas shall appoint two persons, of differ-
2 ent political parties, qualified to serve on an election board, to be overseers of
3 election in a district on petition of five electors of the county setting forth that
4 such appointment is a reasonable precaution to secure the purity and fairness of
5 the election. All the judges of the court able to act at the time shall concur
6 in the appointment.

8 The overseers of election, if they shall agree, shall decide any question with
8 respect to the conduct of the election on which the members of the election board
9 shall differ.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE VIII, SECTION 16-B.

The commission proceeded to the consideration of section 16-B of article VIII.

The secretary read the section as follows:

SECRECY IN VOTING.

1 Section 16-B. Elections by the citizens shall be by ballot or by other methods
2 as prescribed by law. Whatever the method adopted, secrecy in voting shall be
3 preserved.

On the question,

Will the commission agree to the section?

Mr. ALTER. Mr. Chairman: It has been suggested that the same meaning could be preserved and the rather awkward expression avoided by striking the words, "Whatever the method adopted" from line two, so that the second sentence of the section would simply read, "Secrecy in voting shall be preserved," and I move that this amendment shall be made.

Mr. PEPPER. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE VIII, SECTION 17.

The commission proceeded to the consideration of section 17 of article VIII.

The secretary read the section as follows:

TRIAL OF CONTESTED ELECTIONS.

1 Section 17. The trial and determination of contested elections of electors of
2 president and vice-president, of members of the general assembly, and of officers of
3 the state government and of municipalities shall be by the courts or by one or
4 more of the judges thereof. Laws shall be enacted designating the courts and
5 judges by whom the several classes of election contest shall be tried, and regu-
6 lating the manner of trial and matters incident thereto. No law assigning juris-
7 diction or regulating its exercise, shall apply to a contest arising out of an election
8 held before its enactment.

On the question,

Will the commission agree to the section?

Mr. GORDON. Mr. Chairman: I wish to submit a thought on that subject. The first sentence of section 17 reads as follows: "The trial and determination of contested elections of electors of president and vice-president, of members of the general assembly, and of officers of the state government and of municipalities shall be by the courts or by one or more of the judges thereof." Now, in other parts of the constitution the general assembly has the ultimate decision of the election of its own members, and also in other parts of the constitution the election of a governor or of a lieutenant governor is determined ultimately by the general assembly. As this clause stands now it would seem to give the determination of a contested election

of the members of the general assembly to the courts, and the determination of the question of the election of the governor and of the lieutenant governor to the courts, which, of course, is not intended to be done, and can not be done. At the present time the law of 1874 allows the court in the first instance to determine as to a member of the general assembly who is entitled to a certificate of election, and directs that the determination of the court as to that question shall be certified to the general assembly, where it has a persuasive effect only, and the assembly itself proceeds to determine ultimately and finally who was elected to that body. I therefore move to insert after the word "thereof," in the fourth line the following sentence: "The court shall determine in the first instance contested elections of members of the general assembly and of lieutenant governor. They shall finally determine all other contested elections." It will make the sense correspond with the other sections of the organic law and will make the determination by the courts of the election of the members of the general assembly and governor and lieutenant governor in the first instance only, and not finally. It will give the court the final determination of all other contested elections, which is the law as it now stands.

Mr. FISHER. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE IX, SECTIONS 5, 13 AND 13-A.

The commission proceeded to the consideration of sections 5, 13 and 13-A of article IX.

The secretary read the sections as follows:

LIMITATION ON STATE LOANS.

1 Section 5. A law authorizing the borrowing of money by the state government
2 shall specify the purpose of the loan. The money borrowed shall be used only
3 for such purpose.

RESERVE FUNDS LIMITED.—MONTHLY STATEMENTS OF RESERVE FUNDS.

1 Section 13. The money held as necessary reserve by the state government
2 shall be limited by law to the amount required for current expenses and shall
3 be secured and kept as prescribed by law. Monthly statements shall be pub-
4 lished showing the amount of such money, where it is deposited, and how it is
5 secured.

PAYING OUT PUBLIC MONEY.

1 Section 13-A. Money shall be paid out of the state treasury only on appropria-
2 tion made by law and on warrant by the proper officer in pursuance thereof.

On the question,

Will the commission agree to the sections?

They were agreed to.

ARTICLE IX, SECTION 1.

The commission proceeded to the consideration of section 1 of article IX.

The secretary read the section as follows:

TAXATION TO BE UNIFORM.

1 Section 1. Taxes shall be levied and collected only as prescribed by law. A
2 tax shall be uniform upon the same class of subjects within the territorial limits
3 of the taxing authority, except that an income or a decedent's estate below a
4 minimum prescribed by law may be exempted from income and inheritance
5 taxes.
6 Laws may be enacted providing for the levying and collecting of a special tax
7 on anthracite coal when prepared for market. An appropriation not exceeding
8 the amount of the proceeds of such tax may be made by law for the relief of
9 persons, corportions, associations and municipalities injured or damaged by
10 surface subsidence resulting from past or future miuing of anthracite coal.

On the question?

Will the commission agree to the section?

Mr. REED. Mr. Chairman: I think that first sentence should be amended so as to read "Taxes shall be levied and collected only as prescribed by general law."

The CHAIRMAN. Is there any objection to inserting the word "general" before the word "law"?

Mr. REED. It makes it the same as it was in the old section.

The CHAIRMAN. The chair hears no objection, and the amendment will be inserted.

Mr. PINCHOT. Mr. Chairman: I move that in line three after the word "authority" the following language be inserted: "Except that the subjects of taxation may be classified for the purpose of laying graded or progressive taxes."

Mr. PEPPER. Mr. Chairman: I second the amendment.

On the question,

Will the commission agree to the amendment?

Mr. FISHER. The purpose of that is to provide for graded taxation?

Mr. PINCHOT. Graded or progressive taxation.

On the question recurring,

Will the commission agree to the amendment?

It was not agreed to.

On the question recurring,

Will the commission agree to the section?

Mr. FISHER. Mr. Chairman: It seems to me it would add a little to the expression if in the fifth line we strike out the words, "income and inheritance taxes" and insert the single word "taxation." I move to so amend.

The CHAIRMAN. How would that read?

Mr. FISHER. The clause will then read, "except that an income or a decedent's estate below a minimum prescribed by law may be exempt from taxation."

Mr. REED. That will exempt the decedent's estate from general taxation.

Mr. FISHER. Below a certain amount.

The CHAIRMAN. We do not want to do that. Why not make it an exemption of two thousand dollars? A man dying and owning a house, his estate would be exempted from local taxation. That is not the purpose. We are dealing here with income and inheritance taxes.

Mr. FISHER. It seems to me that that qualifies merely the minimum prescribed by law which relates only to income or decedents' estates. It is not a material change.

The CHAIRMAN. My thought is that no part of a decedent's estate below two thousand dollars shall be exempt from all taxation.

Mr. FISHER. I withdraw the amendment, then.

On the question recurring,

Will the commission agree to the section?

It was agreed to.

ARTICLE IX, SECTION 2.

The commission proceeded to the consideration of section 2 of article IX.

The secretary read the section as follows:

EXEMPTION FROM TAXATION LIMITED.

1 Section 2. Laws may exempt from taxation only public property used for pub-
2 lic purposes, places used for religious worship, places of burial not used or held
3 for private profit, and institutions of purely public charity. Private property
4 used for a part or all of the time for educational purposes shall only be
5 exempted if the basic language of instruction is English and if the educational
6 standards are as high as in the public institutions with which it is intended to
7 compete.

On the question,

Will the commission agree to the section?

Mr. REED. Mr. Chairman: This is possibly open to the same objection. It should be, "General laws may exempt from taxation." It is "general laws" in the old constitution, and "general laws" in the amendment we adopted last May. It is stricken out here.

The CHAIRMAN. Is there any objection to inserting the word "general" before the word "laws"? The chair hears no objection, and the insertion will be made.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE IX, SECTION 3.

The commission proceeded to the consideration of section 3 of article IX.

The secretary read the section as follows:

TAXATION OF CORPORATIONS.

1 Section 3. The power to tax shall not be surrendered or suspended by con-
2 tract or grant.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE IX, SECTION 4.

The commission proceeded to the consideration of section 4 of article IX.

The secretary read the section as follows:

LIMITATION ON STATE DEBT.

1 Section 4. A debt shall be created by the state government only to supply
2 casual deficiencies of revenue not exceeding one million dollars, to repel invasion,
3 to suppress insurrection, to defend the commonwealth in war, to pay existing

4 debts, to improve and rebuild highways in the state and to acquire land in the
5 state for forest purposes. A debt for highways shall not be incurred in excess
6 of one hundred and fifty million dollars, or for forest purposes in excess of
7 twenty-five million dollars. A debt for highway or forest purposes shall be
8 created only with the consent of two-thirds of each house of the general assembly
9 and with the consent of a majority of the electors of the commonwealth voting
10 on the question; except that the adoption of this constitution by the electors
11 shall be taken to authorize a law providing for the issuance of bonds for forest
12 purposes not in excess of three million, one hundred and twenty-five thousand
13 dollars annually for eight years.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE IX, SECTION 5-A.

The commission proceeded to the consideration of section 5-A of article IX.

The secretary read the section as follows:

STATE SINKING FUND.

1 Section 5-A. The state government shall not incur a debt maturing more
2 than fifty years from its incurrence.
3 If serial bonds are issued for a debt, the aggregate amount of principal and
4 interest payable in respect to the debt in any year shall not be less than the
5 amount payable in any later year.
6 If serial bonds are not issued, the state government shall maintain by law a
7 sinking fund sufficient to pay the accruing interest on such a debt and annually
8 to reduce the principal by a sum not less than three per centum of such principal.
9 The money of the sinking fund shall be invested only in the bods of the United
10 States or of the state government.

On the question,

Will the commission agree to the section?

Mr. ENGLISH. Mr. Chairman: Before that matter is finally passed may I call your attention to what seems to be an inconsistency between the first and the last paragraph of section 5-A? I may be wrong in my understanding of it. The first paragraph, or rather the first sentence, says, "The state government shall not incur a debt maturing more than fifty years from its incurrence." Then the last paragraph says, "If serial bonds are not issued, the state government shall maintain by law a sinking fund sufficient to pay the accruing interest on such a debt and annually to reduce the principal by a sum not less than three per centum of such principal." It seems to me that nullifies the effect of the first provision and automatically would limit the period of the indebtedness to thirty-three and one-third years, and that therefore the last paragraph ought to be amended so as to substitute the word "two" for "three" per centum.

The CHAIRMAN. Substitute "two" for "three."

Mr. ENGLISH. It seems to me that would harmonize the conflicting sentences.

Mr. McCORMICK. It would make the maturing period thirty-three years.

Mr. ENGLISH. I do not care which, but one or the other ought to be changed.

Mr. FISHER. I do not think there is inconsistency. The section provides for the issuance of two kinds of bonds; one is a serial bond, and the other is a bond with a definite period of fifty years. That condition will apply to the serial bonds, but not to the others. The

others will automatically be reduced by three per centum per annum. That is the provision of the present constitution, and we thought it wise to let that stand.

Mr. ENGLISH. If that is the intention of section 5-A, then the language ought to be changed, because the first sentence states very clearly that "the state government shall not enter into a debt for more than fifty years from its incurrence"; therefore, the legislature, it seems to me, has authority to incur an indebtedness which would mature fifty years from the date it is incurred. If that term is to be limited to the instance where serial bonds only are issued the provision is ambiguous, and it should be expressed in some other words. There is no limitation upon the period at all of fifty years. We have had a period fixed by the constitution, and then it seems to me the change ought to be made in the sinking fund provision that will bring both sentences into harmony. I therefore move to substitute in line eight the word "two" for the word "three."

Mr. FOX. Mr. Chairman: I second the amendment.

On the question,

Will the commission agree to the amendment?

Mr. FISHER. Mr. Chairman: Before that is adopted I would like to voice my protest against the proposed amendment. That is not good business. If you want to change this section so as to harmonize the different provisions let us not do it that way. This makes it partically mandatory that such bonds as are mentioned here shall run for fifty years. There can be a sinking fund of only two per centum.

The CHAIRMAN. Not less than two per centum.

Mr. FISHER. Not less than two per centum. Well, even at that it seems to me that it is better financing for the municipalities to compel the amortization of the indebtedness by the more rapid process.

The CHAIRMAN. Does this only apply to the state?

Mr. FISHER. The state—well, the state is a municipality, and I think if we change this we lengthen the period of amortization.

Let us harmonize this by making a change in the earlier part of the section.

Mr. McCORMICK. I can not see why it is not in proper form as it is now. You can create a debt maturing in fifty years. You can do that providing you issue serial bonds. If you do not issue serial bonds, why we have got to have a three-per-centum sinking fund and your debt is going to mature in thirty-three years. But you can make a loan on a fifty-year maturity, and I do not see why it is not in proper shape.

Mr. FISHER. That is perfectly right, Mr. McCormick.

On the question recurring,

Will the commission agree to the amendment?

It was not agreed to.

On the question recurring,

Will the commission agree to the section?

Mr. PEPPER. Mr. Chairman: Before finally leaving section 5-A, I wish to draw your attention to that word "incurrence." I do not recall the occurrence elsewhere in literature of the word "incurrence." Ought it not be creation? The incurring of a debt is the subjective act of the debtor, but the period of maturity is calculated from the

objective creation of the indebtedness. It seems to me that we should have a little better phrase than we have. It we had said more than fifty years from its creation, for instance.

The CHAIRMAN. Is there any objection to the substitution of the word "creation" for "incurrence?"

Mr. PEPPER. "Or more than fifty years thereafter," which I think is better still.

Mr. FOX. I might say that the same idea occured to me. I went to one dictionary and I could not find it. In the Standard Dictionary it is given without any definition.

Mr. PEPPER. "A debt maturing more than fifty years thereafter."

On the question recurring,

Will the commission agree to the amendment?

It was agreed to.

On the question recurring,

Will the commission agree to the section as amended?

Mr. THORPE. Just a slight matter, Mr. Chairman, the copy on line nine requires the correct spelling of the word "money." I only call it to the attention of the secretary.

On the question recurring,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE IX, SECTION 6.

The commission proceeded to the consideration of section 6 of article IX.

The secretary read the section as follows:

STATE CREDIT NOT TO BE PLEDGED.

1 Section 6. The state government shall not pledge or lend its credit to an
2 individual, corporation or association and shall not become a stockholder or an
3 owner in a corporation or association.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE IX, SECTION 9.

The commission proceeded to the consideration of section 9 of article IX.

The secretary read the section as follows:

MUNICIPAL DEBIT NOT TO BE ASSUMED BY STATE.—EXCEPTIONS.

1 Sectin 9. The state government shall not assume the debt of a municipality
2 unless contracted to enable the commonwealth to repeal invasion, to suppress in-
3 surrection or to defend itself in war.

On the question,

Will the commission agree to the section?

Mr. THORPE. Mr. Chairman: Just one thing, that word "municipality" in the first line. The state is a municipality, is it not? The committee on style has emphasized that all along.

Mr. ENGLISH. But constitution does not contain a real definition of the word "municipality" as we use it.

Mr. THORPE. Well then, it is perfectly clear.

On the question recurring,

Will the commission agree to the section?

It was agreed to.

ARTICLE IX, SECTION 14.

The commission proceeded to the consideration of section 14 of article IX.

The secretary read the section as follows:

PUNISHMENT FOR MISUSE OF STATE MONEYS.

1 Section 14. An officer or an employe of the state government or of a
2 municipality or a member of the general assembly who shall make or attempt
3 to make a profit out of the money of the state government or of a municipality
4 or shall use it for an unauthorized purpose, shall be guilty of a misdemeanor and
5 shall be punished as prescribed by law.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE III, SECTION 26-C.

The CHAIRMAN. The secretary has suggested to the chair that it will take some study by members of the commission who have been giving thought to it to work out the section which we postponed, section 26-C. of article III, the special legislation section. We all have an engagement for this evening, and it was suggested to the chair that it might be well to adjourn now so that this can be gotten in shape for action to-morrow morning.

ADJOURNMENT.

Mr. CARSON. Mr. Chairman: I move that we now adjourn until tomorrow morning at ten o'clock.

Mr. KELLY. Mr. Chairman: I second the motion.

On the question,

Will the commission agree to the motion?

The CHAIRMAN. May I just say to the members of the commission that I know we all understand that it is very vital that we get here to-morrow morning at ten o'clock, because we have quite a good deal of work ahead of us, and it is imperative, almost absolutely imperative, that we should finish our work at this week's session so that we can get our report printed in time to submit it to the legislature. If everybody will be on hand to-morrow morning promptly at ten o'clock it is our hope to finish our work to-morrow; but if not, we will have to stay over Thursday.

On the question recurring,

Will the commission agree to the motion?

It was agreed to.

Whereupon, at 5:05 o'clock P. M., the commission adjourned until 10 o'clock to-morrow morning.

Senate Chamber,

Wednesday, December 15, 1920.

The commission met at 10 o'clock A. M.

The Chairman, William I. Schaffer, in the chair.

The CHAIRMAN. The hour fixed for the meeting of the commission having arrived, the commission will be in order.

ROLL CALL.

The roll was called by the secretary and was as follows:

PRESENT—20.

Alter, Carson, Connelly, English, Fisher, Fox, Gordon, Kelly, McCormick, Miller, Munce, Pepper, Pinchot, Reed, Stevens, Sulzberger, Thorpe, Voll, Warburton, Schaffer (Chairman).

ABSENT—5.

Cuyler, Perrine, Smith, Stackpole, Tyson.

The CHAIRMAN. A majority of the commission being present as is disclosed by the call of the roll, the commission will proceed with its business.

JOURNAL APPROVED.

Mr. SULZBERGER. Mr. Chairman: I move the reading of the journal be dispensed with and the journal approved.

Mr. VOLL. Mr. Chairman: I second the motion.

The motion was agreed to.

ANNOUNCEMENT.

The CHAIRMAN. The chair desires to state that Mr. Stackpole, one of the members of the commission who has been most constant in his attendance expected to be here to-day to aid us in winding up our labors, but is detained at home by sickness and can not be here, much to the regret of all of us.

Has any member of the commission anything to offer at this time?

ARTICLE III, SECTION 26-C.

The commission resumed consideration of section 26-C of article III.

The secretary read the section as follows:

LOCAL AND SPECIAL LAWS FORBIDDEN.

1 Section 26-C. No local or special law shall be enacted:
2 (a) Regulating the affairs of a municipality;
3 (b) Changing the names of persons or places;
4 (c) For the creation or regulation of highways, ferries or bridges, except
5 bridges across streams which form state boundaries;
5 (d) Regulating cemeteries or public grounds not belonging to the common-
6 wealth;
7 (e) Granting divorce or authorizing the adoption or legitimation of children;
8 (f) Regulating elections other than those relating to constitutional conven-
9 tions, except that laws regulating the registration of electors may be applied to
10 cities or boroughs of a specified class only;
11 (g) Regulating the organization of a court or the administration of justice;

12 (h) Regnlating liens, the collection of debts or the effect of judicial sales of
13 real estate;
14 (i) Regulating schools;
15 (j) Fixing the rate of interest, except that laws may be enacted permitting
16 classes of associations and corporations to pay a higher rate of interest than
17 individuals;
18 (k) Regnlating the estates of decedents, minors or persons under disability;
19 (l) Regnlating labor, trade, mining or manufacturing;
20 (m) Creating corporations, or amending, renewing or extending their charters;
21 (n) Granting a benefit, privilege or power;
22 No local or special law shall be indirectly enacted by the partial repeal of a
23 general law. Laws repealing local or special laws may be enacted.

On the question,

Will the commission agree to the section?

Mr. REED. Mr. Chairman: After going over that section with the secretary we found that the provisions of the old constitution had been worked into the new, so that I think everything is covered except two or three amendments that are suggested.

The CHAIRMAN. The amendments proposed by Judge Reed will be read by the secretary.

The secretary read the amendments as follows:

Amend clause (d) by striking out the word "cemeteries" and inserting "burial grounds."

Amend clanse (f) by striking out the words "other than those relating to constitutional conventions."

Alter clause (g) to read: "Regulating the organization, jurisdiction and powers of courts of the same class or grade, judicial process, or the administration of justice."

Amend clause (j) by striking out the words "except that laws may be enacted permitting classes of associations and corporations to pay a higher rate of interest than individnals."

Insert between clause (m) and clause (n) an additional clause to be designated clause (n), as follows: "Exempting property from taxation."

Designate clause (n) as clause (o).

Mr. REED. I think you will see, Mr. Chairman, that the important changes were in clause (g) in regard to regulating and organizing the courts, and the insertion of the words "exempting property from taxation," so that there can be no question about it. I move the adoption of section 26-C as read with these amendments.

Mr. McCORMICK. Mr. Chairman: I second the motion.

The motion was agreed to.

RECONSIDERATION OF VOTE.

Mr. REED. Mr. Chairman: I move that the vote by which section 2 of article IX was adopted yesterday be reconsidered.

Mr. SULZBERGER. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE IX, SECTION 2.

The commission resumed consideration of section 2 of article IX.

The secretary read the section as follows:

EXEMPTION FROM TAXATION LIMITED.

1 Section 2. Laws may exempt from taxation only public property nsed for
2 pnblic pnrposes, places used for religious worship, places of bnrial not used or
3 held for private profit, and institutions of pnrely pnblic charity. Private property
4 nsed for a part or all of the time for educational purposes shall only be exempted
5 if the basic language of instruction is English and if the edncational standards
6 are as high as in the public institntions with which it is intended to compete.

On the question recurring,

Will the commission agree to the section?

Mr. REED. Mr. Chairman: I move to amend this section by striking out the word "general" which we inserted yesterday so that it read "general laws." We have inserted the words "Exempting property from taxation" in section 26-C of article III, and we do not need it again here, so I would strike that out.

Mr. SULZBERGER. Mr. Chairman: I second the amendment.

On the question,

Will the commission agree to the amendment?

It was agreed to.

On the question,

Will the commission agree to the section as amended?

It was agreed to.

RECONSIDERATION OF VOTE.

Mr. SULZBERGER. Mr. Chairman: I would have liked yesterday, had I been able to be here, to have suggested an amendment to the third section of article IX, which I presume was adopted. I therefore move to reconsider the vote by which section 3 of article IX was adopted yesterday.

Mr. McCORMICK. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE IX, SECTION 3.

The commission resumed consideration of section 3 of article IX. The secretary read the section as follows:

TAXATION OF CORPORATIONS.

1 Section 3. The power to tax shall not be surrendered or suspended by con-
2 tract or grant.

On the question recurring,

Will the commission agree to the section?

Mr. SULZBERGER. Mr. Chairman: The section as it stands guards the right of taxation. I would like to add as an amendment that "Agreements hereafter made to assume another's duty of paying public taxes shall be invalid as contrary to public policy."

Mr. CARSON. Mr. Chairman: I will second the amendment.

On the question,

Will the commission agree to the amendment?

Mr. SULZBERGER. Mr. Chairman: While the amendment may be a little startling, it is true, we have got to consider the enormous changes that have been going on in the world and are destined to occur during all our lives. Taxation has been practically a mere bagatelle. In the future taxation will be one of the fundamental characteristics of all our society. The enormous debts of municipalities, commonwealths and the nation are such that taxation must be continued for at least the life of a constitution. That means at least a generation, and probably two. Now, in the old time, when these things were relatively little thought of, if a man was drafted, by paying two or three hundred dollars, he got a substitute to risk his body and his life and his limbs for three hundred dollars. It is but natural that under those circumstances men who would evade

the duty of serving the state with their bodies would also evade the duty of serving the state with their properties. But when the subject becomes one of such overmastering importance then common opinion has invented the word "slacker," and the man who endeavors to evade military duty when called upon is approbriously designated. Now, if it be true that the relation of citizens in the future to the state shall be nearer and more personal, then contracts to evade that pensonal duty should be contrary to public policy. Any attempt to carry out the principles that have been prevalent in the past will be stigmatized by any constitutional convention that may perchance meet in consequence of our deliberations as being made in the interest of the rich, who will always have an opportunity by the ingenuity of lawyers and printers to make forms whereby the duty of contributing from one's own income to pay taxation shall be transferred to a relatively innocent obligee who is under duress while he makes his contract. I would, therefore, prohibit any contract by which the duty of an individual to pay the public tax, which is purely a personal matter, as it will be developed in the future, because after all these financial manifestations you may depend upon it that the bulk of taxation hereafter will be income so far as it will not be also capital; but income will be the main thing, and the man who has income should pay the tax and not transfer it to the man who gives him his income in portion. That is the reason for my amendment.

Mr. FOX. Mr. Chairman: I still think the proposition that has been advanced by my distinguished friend is a startling one, notwithstanding the very plausible argument which Judge Sulzberger has advanced. I fear that he does not entirely apprehend how sweeping this might be in the issuance of bonds, which are often necessary in financing corporations. The fact that the corporation agrees to pay the interest on the bonds is one of the things that the investor considers. I suppose Judge Sulzberger will say that is in the interest of the rich. But a particular example occurred to my mind as he advanced his proposition, which I think would work a great deal of hardship. About twenty years ago the Y. M. C. A. of Easton was anxious to procure a building. They had not the funds, and one of our generous citizens agreed to buy a property for the association provided they would pay the interest on the amount which he invested that way, and the taxes. Now, surely in a case of that kind it would be a hardship to say that was contrary to public policy. Without stopping to multiply examples I can conceive of a great many other instances which would be a very great hardship to prevent contracts of that character, and it seems to me, therefore, that this amendment should not be adopted.

Mr. GORDON. Mr. Chairman: I agree wih Judge Fox in this matter. It seems to me there is no abuse extent requiring the passage of this resolution, and my friend, Judge Sulzberger, I am inclined to think, is rather distorting the facts when he thinks his resolution would prevent slackers, in the payment of tax, from avoiding their responsibility. First, the amendment is that agreements to assume to pay the tax of another shall be invalid. That is to say, he does not seek to prevent persons evading taxation, but he seeks to prevent them being paid by certain persons. In other words, he wishes to destroy the freedom of contract in that respect. If I am indebted

to the commonwealth for taxes, the commonwealth is only concerned in seeing that the tax is paid; and if I make a contract by which somebody else, as the result of a good consideration, will pay the tax, the commonwealth is not hurt, and I know of no one that is hurt by such a transaction as that. The coin does not smell of its origin, and the commonwealth is only concerned in getting its tax; and if he who assumes to pay the tax of another does not pay, then the commonwealth will pursue the real debtor to secure the tax. Hence I do not see that the argument that Judge Sulzberger has advanced as to slackers has any weight. It may possibly have a provoking sound just at this time. I know of no abuse in this matter at all that calls for correction, and Judge Fox has illustrated it in respect to a real estate tax on a charitable donation to the city of Easton by which the beneficiary agreed to assume the tax. There would be great confusion in the security market if this amendment should pass, and also the general freedom of contracts in matters upon which there ought to be absolute freedom, and the state should secure as many obligors as possible.

Mr. SULZBERGER. In regard to the argument of my friend, Judge Gordon, he seems to mistake this as a part of the collection scheme, and that the state has no other relation to the citizens in regard to taxation except to see that it gets the money. Of course, with that I can not argue, because the conception is fundamentally different from the one that is the basis of the amendment, which is that the state has other concerns beside the mere collection of dollars and cents. Its relation to the state, its relation to the whole mass of the state's society, is far more important than the collection of a particular tax; and in regard to the objection of my friend Judge Fox, would not that be met if we confined the amendment to contracts with individuals and did not include associations and corporations?

Mr. FOX. I think not, sir. Very frequently agreements and leases are made.

Mr. SULZBERGER. Those are the very leases I am after. They are made too frequently.

Mr. PEPPER. It seems to me the reconciliation between the two points of view is found in this consideration, that there are cases in which an agreement that one man shall pay the tax of another is founded on a desire on the part of the beneficiary and prompts him to escape the discharge of his obligation to the state. In transactions of that sort is found the reason which has led Judge Sulzberger to present this very important proposal. But is not the difficulty just here, that undertaking to remedy that very evil he has proposed a constitutional amendment which will extend far beyond the evil that he has in mind and invalidate many contracts which are beyond the reach of criticism? It will not do to meet the difficulties suggested by Judge Fox and Judge Gordon by saying that in the case of corporations and associations the situation shall be different from the situation of individuals, because the case may arise between individuals just as well. One of the last things I did before leaving my office was to draw a lease in which one of the covenants of the lease was that the lessee should pay in addition to the fixed rental such taxes as were assessed against the demised premises during the continuance of the term, a provision which could not possibly be criticised on the ground that the lessor was a slacker

in respect to tax payments. It was merely that the consideration which the lessee was to pay for a benefit received was in part expressed in terms of the tax obligation. That would be invalid by the amendment proposed, and unless it is possible, Mr. Chairman, so to restrict the provision designed to remedy a real evil, so that it will be co-extensive only with the evil and will not invalidate perfectly legitimate transactions, it seems to me that our only safe course is to defeat the proposal by an adverse vote.

Mr. CARSON. I seconded Judge Sulzberger's amendment in order to give him the floor and allow the proposition to be debated. I did not second the motion with the view of commiting myself to the proposition which he has made. For instance, the illustrations which Judge Fox and Judge Gordon have given—I was about to rise and make the same remark, though in different language, from what Mr. Pepper has used. Mr. Pepper has stated that he has just completed the drafting of a lease in which the obligation to pay the tax during the term as assessed against the demised real estate is imposed upon the tenant as part of the obligation to pay the rent. Now, I know as a matter of experience that this is a most important clause. You capitalize your real estate at a certain sum, you estimate what your rent shall be to give you a net return on the money, and unless you guard the interest of the landlord by some such clause as Mr. Pepper has indicated it is perfectly possible for your rentals and you income to be arbitrarily and unexpectedly reduced within six months or certainly within a year of the time of the making of the lease. Take real estate in the city of Philadelphia as an illustration. Your assessments on real estate are constantly being moved up. The assessors act every year; sometimes I have known three advances in value to be attempted to be made by the assessors in the course of a single year. Naturally the only remedy is to go to the board of revision of taxes and protest against it as an unreasonable and undue exercise of their power to movve up the value of the real estate. In addition to the increase in assessment, the councils of a great city like Philadelphia have it in their power every year to advance the tax rate, so that your net rental is suffering a diminution, not only from an increase in the assessed value of the property but also because of an increase in your tax rate; and the sum which you had in your mind at the time you fixed your rental is diminished by a power over which you have no control. Unless you can guard your income to a stabilized sum total you never know what your income will be. In fact, where landlords have not been prudent enough to guard themselves in that respect the income which was originally fixed at five and one-half or six per centum is reduced to something like two or two and one-half. Now, if on top of that you are subjected to the taxation of the federal government and the state tax, these lines of diminution being indicated solely as coming from the municipality, why, you are reduced to the situation where your contract for the return of something on your money is entirely invalidated. It strikes me that it is a scythe that is too wide in its sweep. In truth it includes a great many things which the learned Judge has not had in mind. I agree with him entirely in this matter of the bounty-jumper and things of that kind as being odious. But these things only occur in times of stress like war, where public condemation of the slacker or public condemnation of the man who will purchase his own physical immunity from danger by paying

another for throwing his body into the breach is to be despised; but it hardly strikes me as a subject to bring into a constitutional provision.

Mr. SULZBERGER. I am very much obliged to my friends for stating the case better than I could have stated it myself. What Mr. Carson had said does prove hardship of paying taxes, the hardship to the landlord, but he has omitted to state that exactly that hardship is imposed upon the obligee under that covenant, and he too also has a right to be considered. The question, of course, was novel and tentative, and if any modifications that overcome the evils could be made I would be perfectly willing to agree to make them, but the principle is that in a country which in the future is destined to depend on income for its ordinary existence the man who gets the income should pay it and should not transfer it to somebody else.

The CHAIRMAN. I would like to ask a question. If that were passed how would you take care of improvement leases where the landlord is the landlord only of the ground? The tenant constructs the building on it on a long lease and agrees to pay the taxes on the building, the buildings to become the property of the landlord at the end of thirty years. The only return that the landlord gets is the return of rent on the value of the land at the time the lease is made. I have had such transactions.

Mr. SULZBERGER. I think that the question implies the scarcely warranted doubt as to the ingenuity of financial calculators. That element can be computed just as readily as one of the other thousands of elements that constitute the financial transactions of the world.

Mr. FISHER. It seems to me that the difficulty with this proposition is that it is an effort to regulate by constitutional provision something that is purely controlled by economic law, the rates of interest, the rates of rentals. We have a practice now of absorbing the tax as a part of the rate of interest and of the rental of a property. Now, it appears that this proposal interferes with the operation of an economic law. What controls the rate of interest? Why, the demand for money. What is the demand for money but the flow of credits? The business of the country is carried along by the flow of credits. You could go over to the Susquehanna river and atempt to control the volume of the flow of water by some artificial method. If you do there is going to be trouble. The water at times is not going to restrict itself to any rules we make, it will not limit itself to a certain flow; it will break out over its banks in some other form. Now, suppose we attempt to control these rates of interest by some arbitrary, rigid method as proposed here. I say there is going to be a break in some other way. The rates of interest and rentals are going to go up to absorb these charges. That will affect the general conditions of trade and business in the whole country. It seems to me that what Judge Sulzberger has in mind is a real evil. There is no question about that. Individuals take advantage to make unjust exactions from the poor, they take advantages of the necessities of the man who is up against it, and this is an evil that ought to be controlled. But to insert a remedy like this is going to effect the whole economic structure of the country in order to protect what are specific abuses: We are trying to correct these things, we have our loan-shark law, and we are trying to introduce other measures that will control the evils. They are things that ought to be distinguished from the general business of the country. That which is a specific evil ought to

have a specific remedy. Now, what is the situation to-day? As I understand it, securities, notes, bills, mortages and evidence of indebtedness bearing interest are made taxable, and under the existing system are assessed by the local authorities with a certain amount of tax. Suppose the creditor attempts to make the debtor pay this tax, what does the law provide? I have not looked it up recently, but my recollection, Mr. Justice Fox, is that you can not shift the burden of tax to the debtor, because if you do that is usury. But with corporations it is different. The tax on the indebtedness of corporations is made under another provision of the law. That is where this suggestion of Judge Sulzberger would hit hardest. It would affect the finances of corporations in the country at large. It is an almost universal practice for corporations to assume the payment of taxes on their bonds. Now, is that in the interest of the rich or the interest of the poor? Is it in the interest of the rich that the great corporations of the country through which business is performed in these modern times pay the tax for some of us who are unfortunate enough to buy a few thousand dollars worth of bonds. Rather, should we not impose the taxes upon those companies that are most able to bear the burden? It seems to me the more we look into this the more difficulty we encounter. Let us take another illustration, that of the bituminous coal industry. Much of the development is carried on through the form of leases, is it not, Judge Reed?

Mr. REED. Yes, sir.

Mr. FISHER. Now, every time you draw a lease you have to deal with the subject of taxation. The payment to the land-owner or the owner of the coal in place is called a royalty. The coal until it is served is in place and has to be paid by somebody. This would make it impossible for the operator of the coal to assume payment of the tax on the coal before it is served. Even after the coal is served there would be grave doubts as to imposition of tax. This problem has been facing the coal operators all the time, and would add to the complication of this subject. If this proposition were to go into effect it would throw the burden of paying the tax on the owner, who is usually a farmer in very moderate circumstances, and would prevent the wealthy operator from assuming that burden. I suppose if we were to call up in all the instances where the application of this provision would interfere, we could multiply them without limit. We would simply arrive at a condition of entanglement that would be confounding.

Mr. SULZBERGER. I did not flatter myself that the amendment I proposed would meet with ready acceptance, or indeed that it was perfect and adapted to meet all the circumstances of the case; but I did hope that instead of finding out all the evil features of the proposed amendment, after the recognition of the evil it was intended to remedy somebody's mind would be directed towards improving the amendment proposed. Now, the difficulty of dealing with the subject by the legislature is that the legislature has no power to impair the obligation of contracts, and perhaps the objection might be met by inserting in that amendment a grant of power to the legislature to interfere in that kind of contract, and then that would not make it such a sweeping constitutional provision that would overturn the finances of the world in a day.

On the question recurring,
Will the commission agree to the amendment?
It was not agreed to.
On the question,
Will the commission agree to the section?
It was agreed to.

ARTICLE V, SECTION 3.

Mr. PEPPER. Mr. Chairman: I have here some two or three suggestions growing out of the action taken yesterday to clarify the phrase "prescribed by law," in connection with the jurisdiction of courts and so forth. Upon examining into the subject it was found that if the action taken yesterday were to stand it would involve quite an exhaustive study of the whole document before we could say certainly just what would be the effect upon other provisions of the constitution of the amendment which we adopted here in two particular cases, and therefore it is proposed to deal with the cases which gave rise to the discussion by using a phrase which will not raise doubt as respects other parts of the constitution not immediately under consideration.

The first case is one arising in article V, section 3 in connection with the jurisdiction of the supreme court in lines seven, eight and nine. We find that "they shall have appellate jurisdiction by appeal, certiorari or writ of error in all cases, as prescribed by law," and we amended that yesterday by providing "as may hereafter be perscribed by law," "now or hereafter prescribed by law." The objection to that is that it raises doubts as to the meaning of the phrase "as prescribed by law" relating to courts elsewhere in the constitution.

RECONSIDERATION OF VOTE.

Mr. PEPPER. Mr. Chairman: I move that the vote by which section 3 of article V was adopted yesterday be reconsidered.

Mr. GORDON. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE V, SECTION 3.

The commission resumed consideration of section 3 of article V. The secretary read the section as follows:

JURISDICTION OF SUPREME COURT.

1 Section 3. The jurisdiction of the supreme court shall extend over the state,
2 and the judges thereof shall, by virtue of their offices, be justices of oyer and
3 terminer and general jail delivery in the several counties. They shall have
4 original jurisdiction in cases of injunction where a corporation is a party
5 defendant, of habeas corpus, of mandamus to courts of inferior jurisdiction, and
6 of quo warranto as to officers of the commonwealth whose jurisdiction extends
7 over the state, but shall not exercise other original jurisdiction; they shall have
8 appellate jurisdiction by appeal, certiorari or writ of error in all cases, as pre-
9 scribed by law.

On the question recurring,
Will the commission agree to the section?

Mr. PEPPER. Mr. Chairman: It is proposed to strike out the words "they shall have appellate jurisdiction by appeal, certiorari

or writ of error in all cases, as now or hereafter prescribed by law," and substitute therefor "until otherwise prescribed by law they shall have on appeal, certiorari or writ of error all appellate jurisdiction vested in them when this constitution becomes effective."

Mr. GORDON. Mr. Chairman: I second the amendment.

On the question,

Will the commission agree to the amendment?

Mr. ALTER. Mr. Chairman: It seems to me that that amendment would put it into the power of the legislature to take from the supreme court any of the appellate jurisdiction it now possesses. That was a question very seriously considered by the committee on style, and I recall that you asked me to confer with the justices who at that time were in Pittsburgh as to what they thought of the change proposed, and I found on conferring with them they were very emphatic in their belief that the jurisdiction of the supreme court should be to give relief by appeal, certiorari or writ of error one way or another to every litigant as I think the present constitution contemplates; that it should be a constitutional guarantee and not something dependent upon the vote of the legislature from time to time, As I understand the law now, every litigant has the right to have relief from the supreme court. He may not have the right to have his case argued and heard in the regular way, but he has the right to apply to the supreme court for an allowance to have his case considered, and in that way every litigant, rich or poor, and whatever the nature of his litigation, has the right to come there for relief. I am afraid this amendment would permit the legislature to curtail the jurisdiction of the supreme court to such an extent as it might deem wise.

Mr. PEPPER. Mr. Chairman: May I ask the attorney general, through you, whether that objection in substance is not applicable as it stands under the language adopted yesterday? A provision that they shall have all jurisdiction now or hereafter prescribed by law certainly gives to the legislature whatever freedom in the way of subtracting from the jurisdiction of the supreme court that they would have under the language which is now under consideration. The real purpose of this proposal was, first to accept the action of the commission yesterday as expressive of the mind of the commission, and then to deal with the mere question of drafting. What the attorney general says is not the reason why the commission should not take action which it took yesterday. It seems to me what is desired is a provision that the jurisdiction shall remain as at present, or may be amplified hereafter.

Mr. ALTER. Mr. Chairman: The provision as it was worded by the commission yesterday seems to be the same in effect as the provision in the present constitution, where it is provided that they shall have appellate jurisdiction by appeal, certiorari or writ of error in all cases, as is now or may hereafter be provided by law. My understanding of that is that the legislature has the power to regulate procedure, but that the supreme court is given jurisdiction by one or the other of these methods in all cases, and it was the question of changing that language to language which clearly would give the legislature the power to take from or add to. That was the question before the committee on style as to which I conferred with the justices as already stated.

Mr. SULZBERGER. Would not the objection be met by taking the language we have just quoted and substitute for the word "or" "and?"

SECTION POSTPONED.

The CHAIRMAN. Would there be any objection to pass this matter for the present until more thought can be given to it and take it up after lunch? I heard Mr. Justice Simpson announce from the bench recently that the power was inherent in the supreme court in every case to entertain an appeal on certiorari, that the jurisdiction under the law as it is at present was inherent in the court, and is a power that ought never be taken from the supreme court.

Mr. PEPPER. If your suggestion is taken I am sure we shall be able to deal with the situation by what seems to me to be only the reconciling of various views that have been advanced as to the present jurisdiction, that the supreme court shall have appellate jurisdiction in all cases which shall be exercisable in this, that or the other way, as now or hereafter provided by law. I think we shall be able to work it out.

The CHAIRMAN. If there is no objection this section will be postponed for further consideration.

RECONSIDERATION OF VOTE.

Mr. THORPE. Is it proper to bring up section 3-C of article VIII for consideration for a monment?

The CHAIRMAN. Yes, sir.

Mr. THORPE. Mr. Chairman: I move that the vote by which section 3 of article VIII was adopted be reconsidered.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE VIII, SECTION 3-C.

The commission resumed consideration of section 3-C of article VIII.

The secretary read the section as follows:

VOTING WHEN ENGAGED IN MILITARY SERVICE.

1 Section 3-C. When an elector shall be absent in the military service of the
2 commonwealth or of the United States under a requisition by the President, he
3 may vote as if he were present in his place of residence, subject to regulations
4 prescribed by law.

On the question recurring,

Will the commission agree to the section?

Mr. THORPE. Mr. Chairman: Yesterday in the afternoon session, in reference to the original language in the old constitution there was submitted other language for the proposed language in the section as adopted in the session beginning November 9th. In the state of mind of the commission at that moment the change was made. It seems expedient to change it, and I shall move, Mr. Chairman, that the language in the section as adopted at the session beginning November 9th be substituted for any other language now used, with the exception of the word "naval" after the word "military," and

retain the language as adopted at the session beginning November 9th, so that it would read, "when an elector shall be absent in the military or naval service of the commonwealth," and so on.

Mr. ENGLISH. Mr. Chairman: I second the amendment.

On the question,

Will the commission agree to the amendment?

The amendment was agreed to.

On the question,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE X, SECTION 1-A.

The commission proceeded to the consideration of section 1-A of article X.

The secretary read the section as follows:

EDUCATIONAL SYSTEM OF THE COMMONWEALTH.

1 Section 1-A. Laws shall be enacted providing for the operation and main-
2 tenance of an educational system for the commonwealth. This shall include
3 free elementary, secondary and vocational education for all children of the com-
4 monwealth and free mental and vocational education for persons mentally or
5 physically handicapped, free education in American citizenship for adults, schools
6 for the training of teachers, a system of public libraries, one or more universities,
7 and such other educational institutions and agencies as may be wise and neces-
8 sary for the improvement of the citizenship of the commonwealth.

On the question,

Will the commission agree to the section?

Mr. GORDON. Mr. Chairman: I desire to move some amendments to that section. They are not of substance, but they are numerous, and I have embodied them in a redrafted section, which in no particular alters the substance. The word "public" has been left out of the section, and I think it should be inserted. I therefore have drafted a substitute as follows. I repeat there is no change in the substance:

"Laws shall be enacted providing for the operation and maintenance of a public educational system for the commonwealth. This shall include public schools for the free elemental, secondary and vocational education of all children of the commonwealth and for the free mental and vocational education of persons mentally or physically handicapped, for the free education in American citizenship of adults, and for the training of teachers, a system of public libraries, one or more public universities, and such other public educational institutions and agencies as may be wise and necessary for the improvement of the citizenship of the commonwealth."

Mr. FISHER. Mr. Chairman: I second the substitute.

On the question,

Will the commission agree to the substitute?

Mr. PEPPER. Mr. Chairman: My suggestion is not in the way of debate, but is a request of Judge Gordon for permission to include in his proposal a change in the phrase "mentally or physically handicapped." It seems to me that that is an expression unworthy of the document and ascribes to the Almighty the function of handicapping individuals in the race of life. It is hardly what you mean, and it seems to me not so much in the interest of the Almighty as out of deference to the dignity of the situation that it would be well to say, "persons under mental or physical disability," if Judge Gordon is good enough to include that in his motion to amend.

Mr. GORDON. I will accept that.

On the question recurring,

Will the commission agree to the substitute?

It was agreed to.

ARTICLE X, SECTION 3-A.

The commission proceeded to the consideration of section 3-A of article X.

The secretary read the section as follows:

STATE COUNCIL OF EDUCATION.

1 Section 3-A. Laws shall be enacted providing for a state council of educa-
2 tion appointed by the governor. The council shall have the powers and duties
3 prescribed by law. It's chief executive officer shall be the commissioner of
4 education.

On the question,

Will the commission agree to the section?

Mr. GORDON. Mr. Chairman: I move to insert in the first line after the word "of" and before the word "education" the word "public."

Mr. McCORMICK. Mr. Chairman: I second the amendment.

On the question,

Will the commission agree to the amendment?

The CHAIRMAN. I would like to call Judge Gordon's attention to the fact that that would limit the state council's activities to the public school system, would it not?

Mr. GORDON. Yes, sir.

The CHAIRMAN. I think it is the intent of the educational authorities to have all the educational institutions that apply to the state for a charter, with the right to grant degrees, under the jurisdiction of the state council of education. They are there now. For instance, I sit on that council as attorney general, and we have just granted the right to Villanova.

Mr. GORDON. I withdraw my amendment. I was not cognizant of your position.

On the question recurring,

Will the commission agree to the section?

It was agreed to.

ARTICLE X, SECTION 5-A.

The commission proceeded to the consideration of section 5-A of article X.

The secretary read the section as follows:

SUPPORT OF EDUCATIONAL SYSTEM.

1 Section 5-A. Laws shall be enacted making adequate provision, by appropria-
2 tion and through general or special forms of taxation for the effective and
3 equitable support of the public schools and the educational system of the com-
4 monwealth.

On the question,

Will the commission agree to the section?

Mr. GORDON. Mr. Chairman: I suggest that in the third line the words "schools and the" be omitted. It reads now "for the effec-

tive and equitable support of the public schools and the educational system of the commonwealth." But it seems to me it would better read, and be more conformable to the preceding section, "for the effective and equitable support of the public educational system of the commonwealth," and I move, therefore, to strike the words "schools and the."

Mr. PEPPER. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question.

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE X, SECTION 6-A.

The commission proceeded to the consideration of section 6-A of article X.

The secretary read the section as follows:

APPROPRIATION TO SECTARIAN SCHOOLS AND INSTITUTIONS.

1 Section 6-A. Money raised for the support of the public schools and of the
2 educational system of the commonwealth shall not be appropriated to or used
3 for the support of any sectarian school or institution.

On the question,

Will the commission agree to the section?

Mr. GORDON. Mr. Chairman: I move to strike out the words in the first line "schools and of the."

Mr. PEPPER. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE X, SECTION 7-A.

The commission proceeded to the consideration of section 7-A of article X.

The secretary read the section as follows:

SCHOOL FUNDS.

1 Section 7-A. The net receipts from state forests, unclaimed funds derived
2 by the commonwealth either by escheat or otherwise, and money or property
3 designated for the purpose and derived from any source shall constitute the
4 state school fund to be used only for the benefit of the educational system of the
5 commonwealth in such manner as may be prescribed by law.

On the question,

Will the commission agree to the section.

Mr. GORDON. Mr. Chairman: In that section 1 move in line four to insert after the word "the" the word "public" before "educational."

Mr. REED. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE X, SECTION 8-A.

The commission proceeded to the consideration of section 8-A of article X.

The secretary read the section as follows:

PRINCIPAL BASIS OF INSTRUCTION TO BE IN ENGLISH LANGUAGE.

1 Section 8-A. The basic instruction in public and private schools shall be
2 given in the English language and from English texts.

On the question,

Will the commission agree to the section?

Mr. THORPE. Mr. Chairman: I ask for information. Is it understood what the word "basic" means here? Is there any doubt as to its meaning here?

Mr. SULZBERGER. And while you are suggesting doubts, is there any particular meaning in the last words "and from English texts"?

Mr. PEPPER. I think the explanation of the presence of the word "basic" in the section is this, that is originally suggested it was feared by some that the provision would make it impossible to give instruction in schools in languages other than English, and it was thought that we ought to limit our prescription to the case of that fundamental instruction in all subjects which is to be distinguished from specific instruction in particular languages, and the word "basic" was used as being the best contribution that we could make to that thought. "General" instruction is perhaps less satisfactory than "basic." After all, the idea of it is that the basis of education is to be English, and "basic" carries that thought into the adjective form; and with regard to English texts, my recollection is that the commission were of opinion that we wanted not merely to provide that the class- room work in basic instruction should be carried forward in the English language, but that the textbooks should be printed in English.

Mr. SULZBERGER. "Text" means books?

Mr. PEPPER. Yes; not texts for discourse, but textbooks.

Mr. THORPE. Mr. Chairman: Is it not true in the state of Pennsylvania that the subjects taught in the public schools, are regulated by law? Certain subjects shall be taught in the public schools. Would it clarify matters if it should be said here that the instruction in this regard so far as required by law should be in the English language? Is that what they mean? I am afraid that this word "basic," which is a very odd word in a constitution will be subject to dispute and misunderstanding. Let us take for example, Mr. Chairman, can you teach arithmetic better in German than you can in English, or is it different when taught in English than when it is taught in German?

On the question, recurring,

Will the commission agree to the section?

It was agreed to.

ARTICLE XII, SECTION 3-A.

The commission proceeded to the consideration of section 3-A of article XII.

The secretary read the section as follows:

TIME OF ELECTION.

1 Section 3-A. Judges elected by the electors of the commonwealth at large
2 may be elected at general or municipal elections as prescribed by law.
3 Other officers elected by the electors of the commonwealth at large shall be
4 elected at general elections.
5 Officers not elected by the electors of the commonwealth at large shall be
6 elected at municipal elections.
7 Special election days to fill unexpired terms may be prescribed by law.

On the question,
Will the commission agree to the section?
It was agreed to.

ARTICLE XII, SECTION 3-B.

The commission proceeded to the consideration of section 3-B of article XII.

The secretary read the section as follows:

INCOMPATIBLE OFFICES.

1 Section 3-B. No person shall hold, under the state government or under a
2 municipality an office in respect of which he shall receive compensation if he is a
3 member of the congress from the commonwealth or if he holds an office or
4 place or trust or profit under the United States.
5 No person shall hold the office of governor or lieutenant-Governor if he holds
6 another office under the state government or under a municipality.
7 No person shall hold the office of a judge learned in the law if he holds
8 another office or place of trust or profit under the state government, or if he
9 holds an office or place of trust or profit under the United States or under a
10 municipality or under the state government or a municipality of another state.
11 No person shall be a member of the general assembly if he holds, under the
12 United States, an office other than that of attorney-at-law or in the militia or
13 if he is a member of the congress.
14 No person shall hold an appointive office or place of trust or profit under the
15 state government or under a municipality if he has been elected to the general
16 assembly and the term for which he was elected has not expired.
17 No person shall serve as an election officer who shall, within two months,
18 have been a member of the congress or of the general assembly or have held an
19 office or place of trust or profit under the United States or under the state gov-
20 ernment or under a municipality, save only the offices of justice of the peace,
21 of alderman and of notary public, and office in the militia.
22 Laws may be enacted declaring what other offices or places of trust or profit
23 are incompatible with each other or with membership in the general assembly.

On the question,
Will the commission agree to the section?

Mr. ALTER. I have been assigned the task of offering an amendment, or rather a substitute for this section, substituting the following:

"Section 3-B. (1) No person shall be a member of the general assembly or shall hold under the state government or under a municipality an office or place of trust or profit in respect of which he shall receive compensation, if he is a member of the congress or if he holds under the United States an office or place of trust or profit in respect of which he shall receive compensation.

"(2) No person who holds the office of governor or lieutenant governor shall hold under the state government or municipality another office of trust or profit in respect of which he shall receive compensation.

"(3) No person who holds under the state government the office of judge learned in the law shall hold under a municipality an office or place of trust or profit in respect of which he shall receive compensation.

"(4) No member of the general assembly shall, during the term for which he has been elected, hold, under the state government or under a municipality, an appointive office or place of trust or profit in respect of which he shall receive compensation.

"(5) The office of attorney-at-law and office in the militia shall not be deemed an office or place of trust or profit within the meaning of this section.

"(6) Laws may be enacted declaring what other offices or places of trust or profit are incompatible with each other or with membership in the general assembly."

The secretary assures me, Mr. Chairman, that this embodies the provisions of the present constitution with reference to incompatibility brought together and put in some symmetrical shape, except that it does not include the provision that no person shall serve as an election officer who shall, within two months, have been a member of congress or of the general assembly, or have held any office or place of trust or profit under the United States, or under the state government, or under a municipality, except only the office of justice of the peace, of alderman and of notary public. It was thought that the fact of one's holding an office as member of congress or of the general assembly should not disqualify him for acting as an election officer, if it seems desirable that he should so act, any more than a justice of the peace or alderman would be disqualified. Therefore that section was left out of this compilation.

Mr. PEPPER. Mr. Chairman: I second the motion.

On the question,

Will the commission agree to the substitute?

Mr. GORDON. Mr. Chairman: I would like to ask Mr. Alter if his amendment with respect to members of the general assembly does not permit the holding of offices of trust, and only during the period for which a member of the general assembly shall have been elected?

Mr. ALTER. Without compensation?

Mr. GORDON. Yes, sir.

Mr. ALTER. I would say so.

Mr. GORDON. Your amendment, therefore, changes the existing constitution in that respect, and also changes the clause as we adopted it both in May and at the sessions of November 9th.

Mr. ALTER. I think you are right, and I think the secretary was in error to that extent.

Mr. GORDON. I do not know that it is desirable to change the old constitution providing that no senator or representative during the time for which he shall have been elected shall be appointed to another civil office or place of profit under the commonwealth. On November 9th we adopted the language that "No person—"

Mr. ALTER. With your permission, Judge Gordon, I think it would be well to bring it into harmony. If the paragraph marked four were dropped from this proposed substitute, there is nothing there that is not provided for in the earlier section to which you have just referred, the disqualification of a member of the general assembly.

Mr. GORDON. There is nothing.

Mr. ALTER. No, it is exactly the same thing with this difference.

Mr. GORDON. Yes, that is so.

Mr. ALTER. Well, I will ask if the striking out of paragraph four would meet the objection raised by Judge Gordon?

Mr. GORDON. Yes, sir.

The CHAIRMAN. The secretary has a statement that he would like to make with reference to paragraph four.

The SECRETARY. As I understand it, this restriction in paragraph four is that a member of the general assembly shall not during the term for which he has been elected, if he is elected for a term and then resign before the expiration of the term, he could under paragraph one be appointed to an office or place of trust or profit in respect to which he shall receive compensation. He can not under paragraph four, which is similar to the present constitution. Therefore paragraph four adds a substantial provision to paragraph one.

Mr. GORDON. Yes, but it amends the present constitution.

The SECRETARY. It would be amending the present constitution to strike out paragraph four.

Mr. GORDON. In order to bring it up, I move to strike out from paragraph four the following words next to the last line and the last line, "in respect of which he shall receive compensation," so that a person during the term for which he shall have been elected to the general assembly shall be ineligible for appointment to any civil office.

Mr. ALTER. I will accept the amendment.

On the question,

Will the commission agree to the substitute as amended?

It was agreed to.

ARTICLE XII, SECTION 3-C.

The commission proceeded to the consideration of section 3-C of article XII.

The secretary read the section as follows:

DISQUALIFICATION FROM HOLDING OFFICE.

1 Section 3-C. No person shall be a member of the general assembly or shall
2 hold, under the state government or under a municipality, an office or place of
3 trust or profit if he has.
4 (a) Been convicted of embezzlement of public money, of bribery, of attempted
5 bribery, or perjury or other infamous crime, or of fraud in connection
6 with an election while a candidate for office, or of wilful violation of
7 an election law while a candidate for office;
8 (b) Been convicted of having within five years, being a member of the general
9 assembly or an officer of the state government, used the money of the
10 state government for an unauthorized purpose or of having made a profit
11 therefrom;
12 (c) Been convicted upon impeachment;
13 (d) Served as an election officer at the election at which such position of
14 member of the general assembly or office or place of trust or profit was filled,
15 except in the case of such municipal offices, other than county or city offices,
16 as may be prescribed by law.

On the question,

Will the commission agree to the section?

Mr. ALTER. Mr. Chairman: I move that the words "of having" be stricken from line 10, which now reads, with the general provision in lines 1, 2, 3 and 4, "if he has used the money of the state government for an unauthorized purpose or of having made a profit therefrom." It should read, "if he has used the money of the state for an unauthorized purpose or made a profit therefrom." The words "of having" are entirely out of place.

Mr. PEPPER. Mr. Chairman: I second the amendment.

On the question,

Will the commission agree to the amendment?

Mr. REED. Mr. Chairman: I would like to ask in connection with that whether there is a substantial crime in this state known as "corrupt solicitation," or whether there is any distinction between that and bribery. The original constitution of 1874 speaks of "corrupt solicitation." That has been stricken out of this section. I am not versed enough in criminal law to know whether this is substantially bribery.

The CHAIRMAN. The secretary informs me that the briefers who were instructed to look this question up find no difference in the law between the offense of attempted bribery and corrupt solicitation.

Mr. REED. Is there a statute that speaks of corrupt solicitation as such?

The CHAIRMAN. I can not answer that off hand. Of course, the attempt to commit a misdemeanor is a misdemeanor.

On the question recurring,

Will the commission agree to the amendment?

It was agreed to.

On the question,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE XII, SECTION 3-D.

The commission proceeded to the consideration of section 3-D of article XII.

The secretary read the section as follows:

OFFICIAL OATH.—HOW ADMINISTERED.

Section 3-D. Members of the general assembly, officers of the state government and county officers shall, before entering on the duties of their offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support, obey and defend the constitution of the United States and the constitution of the commonwealth; and I will discharge the duties of my office with fidelity; that I have not paid or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure my nomination or election (or appointment), except for necessary and proper expenses expressly authorized by law; that I have not knowingly violated any election law of this commonwealth, or procurred it to be done by others in my behalf; that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office other than the compensation allowed by law."

The foregoing oath shall be administered by a person authorized to administer oaths. In the case of officers of the state government and of judges of the supreme court and of the superior court, the oath shall be filed in the office of the secretary of the commonwealth, and in the case of other judicial officers and of county officers, in the office of the prothonotary of the county in which it is taken. A person refusing to take such oath or affirmation shall forfeit his office. Any person who shall be convicted of having sworn or affirmed falsely, or of having violated such oath or affirmation, shall be guilty of perjury, and shall be forever disqualified from holding any office of trust or profit in the commonwealth. The oath shall be administered to a member of the general assembly by a judge of the supreme court or of a court of common pleas, in the hall of the house to which the affiant has been elected.

On the question,

Will the commission agree to the section?

Mr. REED. It seems to me, Mr. Chairman, that the language of the amendment on May 11th, on the first and second lines, is better than the improvement we made in November, "Members of the general assembly, officers of the state government and county officers shall, before entering on the duties of their offices, take and subscribe the following oath or affirmation." Both in the present constitution and in the amendment as adopted on May 11th the language used was, "Senators and representatives and all judicial, state and county officers shall, before entering on the duties of their respective offices, take and subscribe the following oath or affirmation." It seems to me that language should be changed to read, "Members of the general assembly and all judicial, state and county officers"—because down in the fifteenth line and the sixteenth line there seems to be a distinction drawn between officers of the government and judicial officers.

The CHAIRMAN. The reason for the change, Judge Reed, was, the secretary informs me, that the implication of the present language is that judicial officers are not state officers. State officers are carefully guarded in the other sections of the constitution. Our state officers have been carefully covered by the meaning of certain sections.

Mr. REED. If there is a reason for it, I do not remember it.

Mr. ALTER. Mr. Chairman: I have an amendment to propose to section 3-D. I move that the section be amended by striking out in lines fifteen to nineteen the following: "In the case of officers of the state government and of judges of the supreme court and of the superior court, the oath shall be filed in the office of the secretary of the commonwealth, and in the case of other judicial officers and of county officers, in the office of the prothonotary of the county in which it is taken," and substitute in lieu thereof "In the case of judges of the supreme court and of the superior court and in the case of executive officers of the state government, the oath shall be filed in the office of the secretary of the commonwealth. In the case of other judicial officers and of county officers the oath shall be filed in the office of the prothonotary of the county in which it is taken."

The reason for this proposed amendment is that the section as adopted on November 9th did not mention the superior court. While it is printed here, the secretary informs me that the action taken on November 9th did not include the superior court. Then the language is changed so as to refer to judges of the supreme court and the superior court and executive officers of the commonwealth, so as to avoid the question which would arise as to whether judges are referred to directly as officers of the commonwealth.

Mr. FOX. Mr. Chairman: I second the amendment.

On the question,

Will the commission agree to the amendment?

Mr. REED. Are there any other officers of the state government except executive officers?

Mr. ALTER. I think not. The members of the general assembly take an oath, but they do not subscribe to it. It is not required in the present constitution that they shall subscribe to it, and I know as a matter of fact, as a member, that we did not subscribe to it.

Mr. PEPPER. Before the result of the vote is announced, though I do not want at this stage of our proceedings to precipitate a long debate, I should like to inquire informally of the commission whether

there is any disposition to reconsider our decision to leave the form of oath in the constitution of its present shape. I was more impressed than ever before by the incongruity of that oath with the solemnity of the proceeding of which we were witnesses yesterday. it seems to me to administer an oath like this to a responsible officer of government is to demean government in the eyes of the people, and is to introduce into the assumption of office an element which is entirely foreign to it, and ought to be foreign to it. I can not help thinking we are doing something unworthy if we perpetuate in the constitution so undignified, so unseemly, and so unnecessary a provision as that which is contained in this section. If an official is of the kind to do the things that are here referred to, he is of the kind to commit perjury, and it seems to me idle to imagine that any additional sanctity is given to the office or to the oath by enumerating a whole lot of theoretical offenses of this sort. Now, I am not going to make any motion, sir, but if anybody thinks there is anything in what I say, I think it would be easy to bring in after recess a revised form of oath which would be more seemly and more dignified and yet entirely adequate.

Mr. CARSON. I do not know why Mr. Pepper shrinks from making that motion. I will make the motion. I confess to exactly the same feeling Mr. Pepper expressed, and yesterday it was emphasized; and when I stood there at the bar and was sworn in and had to take an oath that I had not bribed the governor in some way to appoint me as a member of this commission, and when Mr. Cuyler had to stand there afterward alone and take an oath in regard to his membership on this commission, and to have the attorney general swear that he had not given money to induce his appointment, I confess in the first place it is a humiliating position in which to put a self-respecting officer. It is absolutely unneccessary for the protection of the purity of the administration of the appointing power. As to electors or election officers, I can understand it; but I agree with Mr. Pepper entirely, and I think the oath is undignified and unnecessary and a humiliating performance, and it does not apply to the case at all.

The CHAIRMAN. Before that motion is made, we will consider Mr. Alter's motion, or I am afraid we shall get into a legislative tangle.

Mr. CARSON. May I ask Mr. Alter a question, so that we can vote intelligently on this? I do not understand why such a large part of the constitution, because it is a very considerable section, should embody what appears to be purely a legislative function, such as to provide that the oaths of office when taken shall be filed. Necessarily they are filed in the place of performance of duty. It seems to me to indicate some sore of doubt on the part of the governor of inability to prove perjury, and therefore he must have some place where these oaths of office are lodged so that there is no difficulty on the part of the subscribing officer in proving that the oath was originally taken, and there is evidence of it filed in a specific depository. It is exalting into the prominence of the constitution a sort of self-accusation that we are not only requiring oaths like this, but we must designate some depository where the evidence of that oath may lodge in order to secure conviction in case of impeachment. I do not like the whole thing at all.

SECTION POSTPONED.

Mr. CARSON. I move that further consideration of this section be postponed until after recess.

Mr. SULZBERGER. Mr. Chairman: I second the motion.

The motion was agreed to.

The CHAIRMAN. The understanding of the chair is that the gentlemen interested in this matter will draft such a section as they have in mind.

ARTICLE XII, SECTION 3-E.

The commission proceeded to the consideration of section 3-E of article XII.

The secretary read the section as follows:

EXTENSION OF TERM.

1 Section. 3-E. The term of a public officer shall not be extended and his com-
2 pensation shall not be increased or decreased after his election or appointment
3 except that the compensation of a judge required to be learned in the law may be
4 increased.

On the question,

Will the commission agreed to the section?

It was agreed to.

ARTICLE XII, SECTION 3-F.

The commission proceeded to the consideration of section 3-F of article XII.

The secretary read the section as follows:

IMPEACHMENT.

1 Section 3-F. All officers of the state government shall be liable to impeach-
2 ment for a misdemeanor in office. The power of impeachment shall be vested
3 in the house of representatives. An impeachment shall be tried by the senate
4 after each senator has been put on special oath or affirmation. The person
5 impeached can be convicted only with the consent of two-thirds of the senators
6 present. Such conviction shall operate to remove from office the person convicted
7 and to disqualify him from holding a public office or place of trust, but shall
8 extend no further. The person impeached, whether acquitted or convicted, may
9 be liable to indictment, trial, judgment and punishment as prescribed by law.

On the question,

Will the comission agreed to the section?

Mr. GORDON. Mr. Chairman: May I ask a question? "All officers of the state government shall be liable to impeachment for a misdemeanor in office." Was not the former provision, "Upon conviction of a misdemeanor in office"? A misdemeanor in office is a technical crime, and such crimes are triable in the courts.

On the question recurring,

Will the Commission agree to the section?

It was agreed to.

ARTICLE XII, SECTION 3-G.

The commission proceeded to the consideration of section 3-G of article XII.

The secretary read the section as follows:

REMOVAL OF OFFICERS IN WAYS OTHER THAN BY IMPEACHMENT.

1 Section 3-G. An officer who shall be convicted of an infamous crime or of a
2 crime the commission of which involves the violation of an obligation imposed
3 on him as an officer, shall thereby forfeit his office and shall be otherwise
4 punished as prescribed by law.
5 Appointed officers, other than judges, of courts of records, may be removed at
6 the pleasure of the appointing power.
7 Elected officers of the state government, except the governor, the lieutenant-
8 governor, and judges of the courts of record, shall be removed by the governor
9 for reasonable cause, after due notice and full hearing, on the address of two-
10 thirds of the senate.
11 Judges of courts of record, other than the justices of the supreme court and
12 judges of the superior court may be removed by the governor for reasonable
13 cause after due notice and full hearing on the address of two-thirds of each
14 house of the general assembly.

On the question,
Will the Commission agree to the section?
It was agreed to.

ARTICLE XII, SECTION 3-H.

The commission proceeded to the consideration of section 3-H of article XII.

The secretary read the section as follows:

APPOINTMENTS AND PROMOTIONS.

1 Section 3-H. Appointments and promotions in the civil service of the state
2 government and of municipalities shall be according to merit and fitness to be
3 ascertained, so far as practicable, by competitive examination.

On the question,
Will the commission agree to the section?
It was agreed to.

ARTICLE XII, SECTION 3-I.

The commission proceeded to the consideration of section 3-I of article XII.

The secretary read the section as follows:

BRIBERY.

1 Section 3-I. A member of the general assembly, or an officer or employe
2 of the state government or of a municipality, who shall receive or agree or offer to
3 receive for himself or for another any money, office, appointment, employment,
4 testimonial, reward, thing of value or enjoyment, or of personal advantage or
5 promise thereof to influence the performance of a public duty, or a person who
6 shall give or promise or offer to give any money, or thing of value, testimonial,
7 privilege or personal advantage, to a member of the general assembly or to an
8 officer or employe of the state government or of a municipality, to influence
9 him in the performance of a public duty, shall be guilty of bribery, and shall be
10 punished as prescribed by law.
11 In a prosecution for bribery or attempted bribery, or in an investigation
12 thereof, no witness except the accused shall be permitted to withhold his testi-
13 mony on the ground that it may criminate him or subject him to infamy. Such
14 testimony shall not afterwards be used against the witness in a judicial pro-
15 ceeding except in a prosecution for perjury in giving such testimony.

On the question,
Will the commission agree to the section?
It was agreed to.

ARTICLE XVI, SECTIONS 9-C, 9-E AND 10-A.

The commission proceeded to the consideration of sections 9-C, 9-E and 10-A.

The secretary read the sections as follows:

COMMONWEALTH'S RIGHTS OF EMINENT DOMAIN.—POLICE POWER.

1 Section 9-C. The exercise of the right of eminent domain shall not be
2 abridged or so construed as to prevent the taking by law of the property and
3 franchise of corporations and subjecting them to public use the same as the
4 property of individuals. The exercise of the police power shall not be abridged
5 or so construed as to permit corporations to conduct their business in such man-
6 ner as to infringe the equal rights of individuals or the general well-being of
7 the state.

STATUTES OF LIMITATIONS.

1 Section 9-E. No law shall discriminate between corporations and individuals
2 with respect to the time in which suit may be brought against either.

CONDITIONS IMPOSED ON CERTAIN BENEFITS TO CORPORATIONS.

1 Section 10-A. No law shall remit the forfeiture of the charter of a corpora-
2 tion now existing, or amend the same, or otherwise benefit such corporation,
3 except upon condition that it shall thereafter hold its charter subject to the
4 provisions of this constitution.

On the question,

Will the commission agree to the sections?

They were agreed to.

ARTICLE XVI, SECTION 6.

The commission proceeded to the consideration of section 6 of article XVI.

The secretary read the section as follows:

CORPORATE POWERS.

1 Section 6. A corporation shall engage only in the business authorized by its
2 charter.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE XVI, SECTION 7.

The commission proceeded to the consideration of section 7 of article XVI.

The secretary read the section as follows:

STOCKS AND BONDS.—INDEBTEDNESS.

1 Section 7. Subject to such regulations as to issue and sale as may be pre-
2 scribed by law or by an agency established by law, shares of stock may be issued
3 with or without par value. Shares of stock having par value shall be issued
4 as full paid only for the equivalent of such par value in money, labor done or
5 property received, but subject to such regulations as may be prescribed by law
6 or by an agency established by law, a corporation may issue additional full paid
7 shares for a consideration in money, labor or property equal to the current
8 market value of its shares therefore issued. Neither the stock nor the indebt-
9 edness of corporations shall be increased except in pursuance of general law or
10 without the consent of the person holding the larger amount in value of the
11 stock first obtained at a meeting to be held after thirty days' notice given in
12 pursuance of law.

On the question,

Will the commission agree to the section?

Mr. GORDON. Mr. Chairman: I suggest a change in this. If the commission will note on line five beginning with "but subject to such regulations as may be prescribed by law or by an agency established by law, a corporation may issue additional full paid shares for a consideration in money, labor or property equal to the current market value of its shares theretofore issued." The effect of that section as it stands now would be that immediately after the adoption of this constitution the corporations could issue such shares of stock at par value, but they would issue them subject to such regulations as the law might afterwards prescribe. But the right to issue the stock would immediately accrue when the constitution was adopted. That I think is not what was intended; but this was intended, I think, and I suggest that the words beginning with the word "but" in line six to the word "law" in line six be omitted, and that before "corporation" in that line the words "except that" be inserted, and after the word "shares" in the seventh line the words "as prescribed by law or by an agency created by law" be inserted, so that the provision would read as follows: "except that a corporation may issue full paid shares as prescribed by law or by an agency created by law for a consideration in money, labor or property equal to the current market value of its shares theretofore issued." That is to say, such issues of stock could not be made until there is legislation, which I think is what you originally intended. I therefore move that amendment.

Mr. REED. Mr. Chairman: I will second the amendment.

On the question,

Will the commission agree to the amendment?

Mr. PINCHOT. Mr. Chairman: I move to amend Judge Gordon's motion by striking out in lines five to eight, the whole clause which permits the issuance of stock for less than the par value.

Mr. VOLL. Mr. Chairman: I second the amendment to the amendment.

The amendment to the amendment was not agreed to.

On the question recurring,

Will the commission agreed to the amendment?

It was agreed to.

On the question,

Will the commission agree to the section as amended?

Mr. FISHER. Mr. Chairman: I move to amend in line ten by striking out the words, "person holding," and substituting the words, "holders of," so that the sentence shall read, "Neither the stock nor the indebtedness of corporations shall be increased except in pursuance of general law or without the consent of the holders of the larger amount in value of the stock," and so on.

Mr. CARSON. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question recurring,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE XVI, SECTION 7-A.

The commission proceeded to the consideration of section 7-A of article XVI.

The secretary read the section as follows:

INVESTMENT OF TRUST FUNDS.

1 Section 7-A. No law shall authorize fiduciaries to invest in stock, bonds or
2 other securities issued by a corporation except in bonds approved by an agency
3 created by law.

On the question,

Will the commission agreed to the section?

Mr. GORDON. Mr. Chairman: I propose an amendment in style. As it reads now, "No law shall authorize fiduciaries to invest in stock, bonds or other securities issued by a corporation except in bonds approved by an agency created by law." I suggest that the word "bonds" and the word "other" ought to be stricken out, so that it will read, "No law shall authorize fiduciaries to invest in stock or securities issued by a corporation except in bonds approved by an agency created by law."

Mr. SULZBERGER. Or securities?

Mr. GORDON. To invest in stock or securities issued by a corporation.

Mr. REED. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the commission agreed to the section as amended?

It was agreed to.

ARTICLE XVI, SECTION 9.

The commission proceeded to the consideration of section 9 of article XVI.

The secretary read the section as follows:

REGULATIONS OF CORPORATIONS ISSUING NOTES OR BILLS.

1 Section 9. A note or bill issued for circulation by a banking corporation shall
2 be registered and countersigned by an officer of the state government, and its
3 payment shall be secured by the deposit of security to the full amount thereof
4 with the auditor general. The method of registering, countersigning and secur-
5 ing payment shall be prescribed by law.

On the question,

Will the commission agree to the section?

Mr. FISHER. Mr. Chairman: I move to amend in line four by striking out the last two words of the sentence, "auditor general," and to substitute in lieu thereof "state treasurer."

Mr. ENGLISH. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE XVI, SECTION 9-A.

The commission proceeded to the consideration of section 9-A of article XVI.

The secretary read the section as follows:

CORPORATE ELECTIONS.

1 Section 9-A. In elections for directors of a corporation each member or
2 voting stockholder may cast his vote for one candidate, or may distribute them
3 among two or more candidates.

On the question,

Will the commission agree to the section?

Mr. REED. Mr. Chairman: As that provision is in the present constitution it covers the election of managers of corporations of the first class, such as a club. Is it intended to strike that out and restrict this to corporations having stock?

Mr. SULZBERGER. A corporation, it says.

Mr. FISHER. Mr. Chairman: I move to amend by inserting the words "or managers."

Mr. SULTZBERGER. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE XVI, SECTION 9-B.

The commission proceeded to the consideration of section 9-B of article XVI.

The secretary read the section as follows:

FOREIGN CORPORATIONS.

1 Section 9-B. A foreign corporation shall not do business in this state with-
2 out having in the state a known place of business. The secretary of the com-
3 monwealth shall be the agent of the corporation upon whom process may be
4 served.

On the question,

Will the commission agree to the section?

Mr. PEPPER. Mr. Chairman: Has the question been thought of as to whether the word "the" has an exclusive effect in the matter of agency for service? I suggest that it ought to be "an," because it is not the intention by constitutional provision to make it impossible to serve officers of a corporation who would otherwise be amenable to service. This is merely to make it possible to serve the secretary of the commonwealth with legal effect. I may be wrong in that.

The CHAIRMAN. I think so, Mr. Pepper. The thought was to make the secretary of the commonwealth the agent for the service of processes for all foreign corporations.

Mr. PEPPER. Does that mean exclusively?

The CHAIRMAN. Yes; so that there would not be any question as to service.

Mr. ENGLISH. Mr. Chairman: May I inquire as to how it is possible to make the secretary of the commonwealth an agent of a foreign corporation without the consent of the corporation?

The CHAIRMAN. The law now provides that every foreign corporation before it can do business in Pennsylvania must file a bond in the office of the secretary of the commonwealth, and appoint the secretary of the commonwealth as agent.

Mr. ENGLISH. Yes, I think I understand the present law; but as this present section is drawn you make the secretary of the commonwealth the agent of the corporation without the consent of the corporation. I understand that the commonwealth may make it a

misdemeanor for a corporation to do business in the commonwealth without giving that consent, but it certainly is not possible for the state to create an agent in the commonwealth without the consent of the corporation.

Mr. REED. You can make that one of the conditions.

Mr. ENGLISH. That is not what this section purports to do. I am merely asking for information, and I am not criticizing the language in the proposed section.

Mr. FOX. Mr. Chairman: I was about to move to substitute the language of the present constitution. I think the provision relating to the secretary of the commonwealth is a legislative act rather than constitutional. I therefore move to substitute the language of the present constitution.

Mr. PEPPER. I hope this resolution will not prevail. It seems to me, Mr. Chairman, of very great importance that we should by constitutional provision establish the principle that foreign corporations doing business in this state may be amenable to suits through service effected upon the secretary of the commonwealth. The only question that I am raising is whether that should be exclusive of every other method of serving them. There are times when it is very important to act with great dispatch, and opportunity for service exists at the moment, and if one must wait for the time it will take to go to Harrisburg and have the service there, there may be loss through delay. My only suggestion is whether or not it should be limited to a permissive right, but not exclusive of all others. But in deference to the chair, who should be in a position to know more about this, I withdraw that suggestion, but hope it won't lead to a rejection of the section as proposed, because, as I said, it seems to me most important that we should by a constitutional enactment establish the right of citizens of Pennsylvania to get service upon foreign corporations through the secretary of the commonwealth.

Mr. FISHER. Would it meet your sanction if we were to amend section 9-B by making it all one sentence, inserting after the word "business" the words "and making the," so that it would read, "A foreign corporation shall not do business in the state without having in the state a known place of business and making the secretary of the commonwealth the agent," and so forth? That would meet the criticism, I think, offered by Mr. English, and would make it a condition precedent to doing business that the corporation should appoint the secretary of the commonwealth the agent of the corporation.

Mr. CONNELLY. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE XVI, SECTION 9-D.

The commission proceeded to the consideration of section 9-D of article XVI.

The secretary read the section as follows:

CORPORATE OBLIGATIONS OWNED BY STATE.

1 Section 9-D. Except as prescribed by law, an obligation of a corporation held
2 or owned by the state government shall not be exchanged, transferred, remitted,
3 postponed, diminished or discharged except by payment thereof into the state
4 treasury.

On the question,
Will the commission agree to the section?
It was agreed to.

ARTICLE XVI, SECTION 10.

The commission proceeded to the consideration of section 10 of article XVI.

The secretary read the section as follows:

REVOCATION AND ALTERATION OF CORPORATE CHARTERS.

1 Section 10. Laws may be enacted for the alteration, revocation, or annulment
2 of corporate charters revocable when this constitution becomes effective or there-
3 after granted when such charters shall be deemed injurious to the citizens of
4 the commonwealth, in such manner, however, that no injustice shall be done to
5 the corporators.

On the question,
Will the commission agree to the section?

Mr. FISHER. Mr. Chairman: I move to strike out the last word of the section, "corporators," and substitute in lieu thereof the word "corporation." I think the word "corporators" is used here without consideration. That would probably refer to the original incorporators. Of course it is used in the present constitution, but it seems to me that the limitation should be placed upon the right to take property without doing injustice to the corporation. I will make a motion to so amend.

Mr. ALTER. Mr. Chairman: I second the amendment.

On the question,
Will the commission agree to the amendment?

Mr. PEPPER. Mr. Chairman: I hope that the amendment will not prevail. This is to deal with the case in which the life of the corporation has become extinct, and the only persons to whom justice is to be done are those who were its members. I would support a motion to substitute the word "members" for "corporators," but it seems to me—

Mr. SULZBERGER. May I suggest, Mr. Pepper, that if we strike out "corporators," and end with the word "done," that would include persons who were creditors, bondholders and directors. I move to make that amendment.

Mr. FISHER. Mr. Chairman: I accept the amendment offered by Judge Sulzberger.

On the question recurring,
Will the commission agree to the amendment?
It was agreed to.

On the question,
Will the commission agree to the section as amended?
It was agreed to.

ARTICLE XVI, SECTION 11.

The commission proceeded to the consideration of section 11 of article XVI.

The secretary read the section as follows:

BANK CHARTERS.

1 Section 11. Laws may be enacted to provide for the incorporation of banks
2 and trust companies and to prescribe the powers thereof.

On the question,

Will the commission agree to the section?

Mr. ALTER. Mr. Chairman: I move that this section be dropped. I would give great weight to the thought of the gentleman from Indiana if he has an expression of thought on this subject; but it seems very clear that this section is entirely superfluous, and its inclusion in the draft is unworkmanlike and should not be here. The present constitution contains some very specific and strict limitations upon the power of the legislature to incorporate banks and trust companies. By an amendment adopted at the last election it is provided that the legislature shall have the power to incorporate and regulate banks and trust companies, that being adopted for the purpose of getting rid of the very strict section which existed in the present constitution prior to the election in November. Now, when we are making a new constitution there is no more reason for including a section providing that the legislature shall have power to incorporate and regulate banks and trust companies than to provide that it shall have the power to incorporate and regulate insurance companies or any other class of corporations. It is simply an absolutely unnecessary and superfluous grant of a power which exists in the legislature with reference to banks and trust companies and every other kind of companies, and because it happens by reason of the existence of the clause which was formerly in the present constitution and the method by which it was gotten rid of; because such a provision is now in the present constitution is no reason at all, I think, for including the provision in the new draft.

Mr. PEPPER. Mr. Chairman: I second the motion.

On the question,

Will the commission agree to the motion?

Mr. FISHER. Mr. Chairman: From a lawyer's point of view there is a great deal of force in what Mr. Alter has said. If this were eliminated it would give the legislature full power in the premises. But banks have been reorganized as a class separate and apart from other classes of corporations ever since we have had a constitution, and I believe have been so dealt with in the laws. Therefore it might leave a wrong impression if we were to eliminate any reference to banks whatever. We have, under an act passed in 1917 and renewed again in 1919, a commission engaged in the codification of the banking laws of the state. There has been much federal legislation on the subject of banks in the last few years. We have had the creation of the federal reserve system by congress, and by decisions of the supreme court, in pursuance of that federal legislation, national banks have been vested with large powers which did not seem to be in contemplation when they originated. Now, to meet this situation and to meet changing economic conditions of the country, we want to bring our banking laws up to date.

We were confronted with this situation. There was a limitation on the life of state banks of twenty years, which was similar to the limitation of the corporate life of a national bank. Another reason, I suppose, for such a limitation is that originally the banks were endowed with powers of issue. Under congressional laws the right of issue was practically denied to state banks, so that they had become purely banks of discount and deposit. There is no reason why the life of a bank should be limited if its functions are limited to discount and deposit. We have on our statute books the old original banking act of 1850, which authorizes the creation of banks of issue; but it is superseded by the act of 1876, which was passed for the incorporation of banks limited to the receipt and the payment of money. That is practically the law which is in operation now.

When the national banks were given fiduciary powers a law was introduced in the legislature giving the same power to our state banks and it is now on the statue books. It does seem to me from my official observation and experience that fiduciary powers ought not to be exercised by any corporation with a life limited to twenty years. We know that there were certain difficulties with the national banking system due to the disagreement between the comptroller of the currency, who had full option and powers in the premises, and some of the national banks, the Riggs National Bank for instance. It was sound and there was no reason why the charter should not be renewed. As I understand, there was a disagreement between certain officers and the comptroller of the currency. The comptroller of the currency said arbitrarily, "We will not renew this charter." Now, let us assume that the Riggs National Bank had a large amount of fiduciary estates and there had been a refusal to renew its charter. What a great amount of harm might have been done! You can easily see the confusion that might arise. The same confusion might arise in the state if there is an arbitrary refusal to renew the charter of a bank. To overcome any possibilities of that kind, we want to give state banks perpetual charters, if they are to do this kind of business. If the banks go into the business, which has been formerly exclusively done by the trust companies, there is no reason why trust companies should not be endowed with banking powers, so that the distinction between the classes of banking institutions will be practically eliminated. To bring that about this amendment was adopted in the constitution, and a code is now being prepared on that basis. I am afraid if you strike it out here there might hereafter be some misunderstanding or misapprehension on the subject, and it seems to me there con be no objection to leaving it in. It does not enlarge the powers, it does not change the powers, but it simply makes a specific expression upon that subject. It may be a work of supererogation, but I think it can do no harm, and I think it ought to be left stand in our draft.

Mr. ALTER. Mr. Chairman: I stated when I offered this motion that I would give very great weight to any thought the gentleman from Indiana might have on the question, if he had any. If he thinks it is essential to have this provision here, I think his word governs my mind in matters relating to banks and trust companies. I would suppose, however, as the amendment adopted in November was carefully prepared for a particular purpose, it would be well to have the language of that amendment instead of this language here. I

would ask that consideration of this section go over until after lunch, because we do not have the language adopted in November. The secretary tells me he is endeavoring to procure it.

The CHAIRMAN. This is the exact language.

Mr. ALTER. The secretary says it is not.

Mr. FISHER. The understanding was that it was to be drawn in the exact language of the amendment, and the secretary will know because—

The SECRETARY. I would like to apologize to Mr. Fisher for not carrying out his directions. The mistake was typographical. It was supposed that we had followed the exact language, but when I came to go over and check up this book just before this meeting I found that the language printed as having been adopted at the sessions beginning November 9th did not contain the language adopted then. I assume that the language adopted in November when seen at luncheon will probably contain a number of words, which, on consideration, you desire to retain, can be altered to conform to the general style of the rest of the constitution.

Mr. REED. I think you will find the second column, the language as adopted at the sessions beginning May 11th, is the language in the amendment.

Mr. ALTER. Mr. Chairman: I move that the language adopted at the sessions beginning November 9th be substituted for this section.

Mr. FISHER. Mr. Chairman: I second the substitute.

The substitute was agreed to.

ARTICLE XVI, SECTION 13.

The commission proceeded to the consideration of section 13 of article XVI.

The secretary read the section as follows:

JOINT STOCK COMPANIES OR ASSOCIATIONS TREATED AS CORPORATIONS.

1 Section 13. The term "corporations" as used in this constitution includes
2 joint stock companies or associations having any of the powers or privileges of
3 corporations not possessed by individuals or partnerships.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE XVII, SECTIONS B-1, 2-B¼, 8 AND 12.

The commission proceeded to the consideration of sections B-1, 2-B¼, 8 and 12 of article XVII.

The secretary read the sections as follows:

EMINENT DOMAIN, INJURY OR DESTRUCTION OF PROPERTY.

1 Section B-1. A corporation association, individual or municipality invested
2 with the privilege of taking private property for public use shall make just
3 compensation for property taken, injured or destroyed. The compensation shall
4 be paid or secured before such taking, injury or destruction. No law shall
5 deprive a person of an appeal from a preliminary assessment of damages, and,
6 on appeal, either party may have the damages, assessed by a jury according to
7 the course of the common law.

PREFERENCES AND REBATES PROHIBITED.

1 Section 2-B¼. No discrimination in charges or facilities for transportation
2 shall be made between transportation corporations and individuals, or in favor
3 of either, by abatement, drawback or otherwise, and no railroad or canal corpora-
4 tion, or any lessee, manager or employe thereof, shall make any preferences in
5 furnishing cars or motive power.

PASSES PROHIBITED.

1 Section 8. A corporation being a common carrier shall not grant free passes
2 or reduced rates to any person except to its own officers or employes.

ENFORCEMENT OF THIS ARTICLE.

1 Section 12. Laws shall be enacted to enforce the provisions of this article.

On the question,

Will the commission agree to the sections?

They were agreed to.

ARTICLE XVII, SECTION A-1.

The commission proceeded to the consideration of section A-1 of article XVII.

The secretary read the section as follows:

REGULATION OF PUBLIC UTILITIES.

1 Section A-1. Public service and the business of those engaged therein may be
2 regulated by law or by an agency created by law.

On the question,

Will the commission agree to the section?

Mr. FOX. Mr. Chairman: I would like to inquire whether this is correctly printed or whether there is an omission of the word "corporation."

The CHAIRMAN. The secretary will answer.

Mr. FISHER. I think I can answer. It is designedly omitted because there are many individuals who are engaged in furnishing public service, and it is not the desire to limit these provisions to a corporation engaged in public service.

On the question recurring,

Will the commission agree to the section?

It was agreed to.

ARTICLE XVII, SECTION 1.

The commission proceeded to the consideration of section 1 of article XVII.

The secretary read the section as follows:

RAILROADS AND CANALS TO BE PUBLIC HIGHWAYS AND COMMON CARRIERS.—CONNECTION WITH OTHER LINES.

1 Section 1. Railroads and canals shall be public highways and railroad and
2 canal corporations shall be common carriers. Such corporations may construct
3 and operate railroads and canals between any points within the state and may
4 cross and connect with other railroads and canals within the state and at the
5 state line. They shall receive, at connecting points and shall transport, each
6 other's passengers and freight without delay or discrimination. Railroad cor-
7 porations shall receive at connecting points and transport each other's cars and
8 canal corporations shall likewise receive and transport each other's vessels.
9 A corporation organized for the purpose shall have the right to construct
10 lines of telegraph and telephone within the state. The owners or operators of

11 telegraph or telephone lines may connect them with the telegraph and telephone
12 lines of others. They shall receive at connecting points and shall transmit each
13 other's messages.
14 The rights and obligations set forth in this section shall be exercised only as
15 prescribed by law or by an agency created by law.

On the question,

Will the commission agree to the section?

Mr. GORDON. Mr. Chairman: I have been furnished with an amendment on this subject which I wish to submit to the commission. In the second line, "Such corporations may construct and operate railroads and canals, between any points within the state," and so on. I do not know what the purpose of that clause was in the original constitution, I do not know why it was inserted, and I do not know what its effect is. It would seem to give a roving commission to construct a railroad between any points if it had a purpose, a definite purpose. It is so clouded that it raises a doubt. I believe it might be well omitted, so that the section will read "such corporations," omit all down to line four, to the word "may," "Such corporations may cross and connect with other railroads and canals within the state and at the state line;" and the last clause of this section, "The rights and obligations set forth in this section shall be exercised only as prescribed by law or by an agency created by law." Therefore the right to build railroads would be subject to the prescription of the statute law, and the termini would be determined by their charters, and there would not be left in the section a clause which would seem to give such corporations a right to construct railroads anywhere they choose. I therefore submit this amendment to the consideration of the commission to strike out on line two after the word "corporations" all down to and including the word "and" in the fourth line.

Mr. SULZBERGER. Mr. Chairman: I do not understand why the last paragraph, lines fourteen and fifteen, does not cover any possible objections to the use of that definition of the powers of the corporation.

Mr. GORDON. They seem to be wholly useless words. If they have a purpose at all it is to give some right not clearly expressed in this section.

The CHAIRMAN. I am not certain that I am correct in my recollection, Judge Gordon, but my recollection is that, in the Lackawanna cut-off case, the supreme court decided, in passing upon the meaning of these words "between any points," that the railroads would have to be constructed on the line between the termini, which did not give them a roving commission. It had to construct on a line between the termini as the line was determined by the locating resolution of the board of directors, and that it meant that it was to prevent rather than to permit a roving commission over the state. That is my recollection in the decision, although I have not looked it up.

Mr. GORDON. Then these words which I have indicated might very well be omitted. They are tautology.

Mr. FISHER. Mr. Chairman: I would say that the chairman is entirely correct in his interpretation. While this is expressed in the form of a grant of power it has been interpreted as a limitation upon the exercise of power. The purpose is to compel a railroad when it goes to construct a line to select its terminal points,

making a definite location. After the terminal points are selected, the railroad is obliged to survey and lay out its line and then adopt that line by action of the board of directors which fixes its right of way. If you remove the designation of the terminal points, of course, you give a greater latitude to the railroads in selecting a location. This provision has that effect. It has an additional effect now. In these days of supervision over the duties and obligations of a railroad this provision comes into force. What is the field of the railroad's operation? How far geographically do its obligations and duties extend? This has become a very important matter and has been often before the public service commission and the interstate commerce commission. They have determined that the field of the duties of the carriers is limited by its terminal points. They can not be required to build beyond this, or render service beyond this, so that it is used in enabling these bodies to arrive at a determination of the field of activity of a common carrier. That is the purpose of this provision. Whether we want to take it out and remove this limitation and really give the railroads a roving commission to locate their railroads where they will is another question. The railroads are mainly built and in operation, and probably this provision will not have very much application in the future.

Mr. GORDON. Mr. Chairman: This was offered with the comment which I stated to the commission. I have no preference upon the question, and what Mr. Fisher says is new to me entirely. I did not suppose it was limited, quite the contrary; I thought it would be equivalent to an indefinite grant.

Mr. FOX. Mr. Chairman: I think too that it would be unfortunate to strike out these words. It confers upon the railroad companies the right to construct and operate their railroads, and I should think it would be a very serious thing to take that out of the constitution. I hope, therefore, that the amendment will not prevail.

Mr. GORDON. Mr. Chairman: In view of the objections stated, I withdraw the amendment.

On the question recurring,

Will the commission agree to the section?

It was agreed to.

ARTICLE XVII, SECTION 1-A.

The commission proceeded to the consideration of section 1-A of article XVII.

The secretary read the section as follows:

CONSTRUCTION OF CANALS TO CONFORM TO FIXED STANDARDS.

1 Section 1-A. Provision shall be made by law for the construction of canals in
2 accordance with standards prescribed by law or by an agency created by law.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE XVII, SECTION 2-B.

The commission proceeded to the consideration of section 2-B of article XVII.

The secretary read the section as follows:

NO DISCRIMINATION IN SERVICES OR CHARGES.

1 Section 2-B. All individuals, associations and corporations shall have equal
2 right to have persons and property transported over railroads and canals and
3 to have messages transmitted over telegraph and telephone lines. There shall
4 be no undue or unreasonable discrimination, in facilities or charges, for such
5 transportation or transmission within the state or coming from or going to any
6 other state. A charge for such transportation or transmission within the state
7 shall not exceed the charge for a similar service in the same direction to a more
8 distant point but excursion or commutation tickets may be issued at special
9 rates.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE XVII, SECTION 2-C.

The commission proceeded to the consideration of section 2-C of article XVII.

The secretary read the section as follows:

CONSOLIDATION PERMITTED.

1 Section 2-C. A public service corporation, when authorized by law or by an
2 agency created by law, may consolidate with another public service corporation
3 or may acquire its stock, property or franchises.

On the question,

Will the commission agree to the section?

Mr. REED. Mr. Chairman: It does not particularly interest me, but I think Mr. Pinchot has an amendment to offer to this section, with reference to a railroad furnishing cars to its customers.

Mr. PINCHOT. I do not get the reference that the judge made. I was thinking about something else.

Mr. REED. No railroad or canal corporation, or any lessee or manager shall make any preference in furnishing cars and motive power.

Mr. PINCHOT. In what section?

Mr. REED. Section 2-B. It originally applied to railroads and the word canals was put in there without any thought of the effect.

The CHAIRMAN. There is nothing before the commission but the question on the adoption of section 2-C.

On the question recurring,

Will the commission agree to the section?

It was agreed to.

ARTICLE XVII, SECTION 2-D.

The commission proceeded to the consideration of section 2-D of article XVII.

The secretary read the section as follows:

LIMITATION OF POWERS OF COMMON CARRIERS.

1 Section 2-D. A corporation being a common carrier shall not transport over
2 facilities which it owns or operates articles which it has directly or indirectly
3 mined or manufactured for sale.
4 Such corporation shall not directly or indirectly acquire an interest in land
5 except for the purpose of carrying on its business. It shall engage only in the
6 business of a common carrier, except that if it uses electricity as a motive power,
7 it may, when authorized by an agency created by law, furnish electricity to
8 others for light, heat or power.
9 A mining or manufacturing corporation shall not be deemed a common carrier
10 for the purposes of this section by reason of carrying its products on its rail-
11 road or canal not exceeding fifty miles in length.

On the question,

Will the commission agree to the section?

Mr. REED. Mr. Chairman: Mr. Cuyler was unable to be here, and asked me to call your attention to the words of the fourth and fifth lines. "Such corporations shall not directly or indirectly acquire an interest in land except for the purpose of carrying on its business," and to ask whether this should not be striken out, because he thought that the following sentence fully covers the case. "It shall engage only in the business of a common carrier," and so on. In the sixteenth article we struck out the prohibition against holding real estate by a corporation and provided that it should engage only in the business covered by its charter, and if we say so there I think we consistently ought to strike this sentence out.

Mr. FISHER. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE XVII, SECTION 9-A.

The commission proceeded to the consideration of section 9-A of article XVII.

The secretary read the section as follows:

GRANT OF WATER RIGHTS.

1 Section 9-A. A right in waters shall not be granted by the state government
2 or by a municipality for more than fifty years or without reasonable compensa-
3 tion.

On the question,

Will the commission agree to the section?

Mr. REED. Mr. Chairman: I think there is an amendment to that section.

Mr. PEPPER. Yes, I handed up yesterday to the Secretary for distribution a form of amendment. I move the substitution of the following for section 9-A: "A right in waters shall not be granted by the state government or by a municipality for more than fifty years or without reasonable compensation. At the expiration of the first or any subsequent grant to the grantee the state government or the municipality shall make a new grant or pay or cause to be paid compensation for all property necessary to the exercise of the right and upon such payment title to said property shall vest in the state government or municipality or corporation making the payment."

Mr. PINCHOT. Mr. Chairman: I second the substitute.

On the question,

Will the commission agree to the substitute?

Mr. REED. Mr. Chairman: I would like to ask Mr. Pepper to consider certain words there, where he says shall make a new grant to the present occupier, or something of that sort.

Mr. PEPPER. Mr. Chairman: I am glad to accept Judge Reed's suggestion, if my seconder will do so. I would modify the phraseology, "At the expiration of the first or any subsequent grant the state government or the municipality shall make a new grant to the holder of the right."

Mr. PINCHOT. Mr. Chairman: I accept that, sir.

Mr. PEPPER. "Or pay or cause to be paid compensation for all property necessary to the exercise of the right, and upon such payment title to said property shall vest in the state government or municipality or corporation making the payment."

Mr. FISHER. Mr. Chairman: May I ask Mr. Pepper his views as to what the situation might be if at the termination of a fifty-year grant the municipality or state should refuse to either take over or renew? It is mandatory, but suppose they just refuse to do it, then what would be the status of the case?

Mr. PEPPER. My answer would be, sir, that where there is a constitutional prescription that the grant shall be limited to fifty years, and at the expiration thereof the state government or municipality must take one or the other of two courses, the failure of the government of the state or municipality to take either of these two courses would leave the grantee in possession of his grant without limitation. It seems to me that effect must be given to constitutional policy and that can not be defeated by the failure of the municipality or state government to act.

Mr. SULZBERGER. If he were forcibly ejected it would give him a common-law right to act.

Mr. VOLL. Suppose a third party came in at that time and made a bid for that grant, what would be the status of the case?

Mr. PEPPER. It is for that reason, and to cover such a case as you have in mind, that the language has been made to cover the case of the state government or municipality or such third person, that is, the person making the payment. In other words, provision is here made for the contingency in which at the expiration of the period it might be the policy of the state government or the municipality to make a grant on other terms to a third person, but that would be conditioned upon that person's supplying the payment necessary to make compensation to the existing grantee.

Mr. REED. I am a little late, perhaps; but I want to ask Mr. Pepper whether it is not the intention that this should apply to all rights in waters, that is, to apply to water supply companies. I suppose the purpose was to apply it to a water power company. It is broad enough to include a company furnishing water power to a municipality.

Mr. PEPPER. The language is broad enough to apply to all cases of rights in waters. If it were decided to restrict it to rights in waters procured for power purposes an amendment to the effect would have to be made. It seems to me that wherever the grant was of a water power or water supply which belong to the public the principles applicable are the same.

The CHAIRMAN. As a matter of fact, the water supply companies, all those I know of, do not get their water supply—

Mr. PEPPER. That is not the thought, sir; but it would be proper, would it not, Mr. Chairman, if we were to think of a case in which there was a public source of water supply that the question of wether the grantee was going to use it for distribution or for power purposes should make no difference in the policy of securing the state?

The CHAIRMAN. No.

On the question recurring,

Will the commission agree to the substitute?

It was agreed to.

ARTICLE XVIII, SECTION 1.

The commission proceeded to the consideration of section 1 of article XVIII.

The secretary read the section as follows:

AMENDMENT OF CONSTITUTION.

1 Section 1. An amendment to this constitution may be proposed in the general
2 assembly. If agreed to by a majority of the members elected to each house,
3 it shall be entered on the journals with the names of the members voting for
4 and of those voting against, and the secretary of the commonwealth shall
5 cause it to be published once a week for four weeks immediately preceding the
6 next general election in at least two newspapers in every county in which news-
7 papers shall be published. If it shall be likewise agreed to by the next general
8 assembly, the secretary of the commonwealth shall cause it to be published in
9 the manner aforesaid for four weeks immediately preceding the first general or
10 municipal election which shall first occur not less than three months after such
11 agreement, and it shall be submitted at such election to the electors of the
12 commonwealth in such manner as the general assembly shall prescribe. If it
13 shall be approved by a majority of the electors voting thereon, it shall become
14 a part of the constitution. When two or more amendments are submitted to the
15 electors at the same time, they shall be voted upon separately. When any
16 amendment submitted to the electors shall not be approved by a majority thereof,
17 no amendment substantially the same shall again be submitted to the electors
18 within five years.

On the question,

Will the commission agree to the section?

Mr. PEPPER. Mr. Chairman: I move to amend by striking out the final sentence, which now reads, "When any amendment submitted to the electors shall not be approved by a majority thereof, no amendment substantially the same shall again be submitted to the electors within five years." If that is seconded I will state briefly my reason.

Mr. VOLL. Mr. Chairman: I second the amendment.

On the question,

Will the commission agree to the amendment?

Mr. PEPPER. It seems to me, Mr. Chairman, whether or not a proposed amendment is substantially the same as a previous amendment is a question for legislative determination. It does not seem to me possible to prescribe by constitutional enactment the conditions under which it shall not be possible for the legislature to make a new submission. "Substantially the same" is not a term of art, it guides nobody, and it is a mere counsel to the legislature to exercise discretion which in the absence of this provision they would have, so I think it will clarify our work if we omit that sentence.

Mr. REED. Mr. Chairman: The purpose of that section in the original constitution and in this amendment was to prevent the constant amending of the constitution. As you know, there was a construction put upon this present constitution that you could not submit any amendment for five years. That was not followed. But the principle has been recognized and followed that no amendment should be made within five years, no similar amendment should be submitted. There ought to be some sort of solemnity about amending this constitution. It should not be that an amendment might be submitted this year, voted down, and started again in two years.

The CHAIRMAN. We did that, Judge Reed, with the good roads loan bill. In that form I have had to consider this question in my official capacity as attorney general. It is a most dangerous provision in the constitution, I think. It would involve constitutional amendments in litigation at a time when there ought to be no litigation upon them.

Mr. REED. Mr. Pepper says it only guides discretion.

Mr. PEPPER. I say it is a counsel to them to use their discretion, but it does not guide them in the exercise of it.

Mr. CARSON. What do I gather from the attorney general's remarks? Is it dangerous to strike it out?

The CHAIRMAN. No, it is dangerous to have it in the constitution. It involves constitutional amendments in litigation which they should never be involved in.

Mr. CARSON. Would you strike it out?

The CHAIRMAN. Personally I am in favor of Mr. Pepper's amendment to strike it out; yes, sir.

Mr. CARSON. That is what I wanted to get at.

On the question recurring,

Will the commission agree to the amendment?

It was agreed to.

On the question,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE XVIII, SECTION 2.

The commission proceeded to the consideration of section 2 of article XVIII.

The secretary read the section as follows:

CONSTITUTIONAL CONVENTION.

1 Section 2. A new constitution, or amendments to this constitution or a re-
2 vision thereof may be proposed by a convention authorized by law and com-
3 posed of delegates chosen by the electors of the commonwealth. Such conven-
4 tion shall be held only with the approval of a majority of the electors of the
5 commonwealth voting on the question of calling the convention. The new con-
6 stitution, the amendments or the revised constitution proposed by the conven-
7 tion shall become effective only when ratified by a majority of the electors of the
8 commonwealth voting thereon. The times and methods of such voting and elec-
9 tion and the composition of the convention shall be prescribed by law.

On the question,

Will the commission agree to the section?

Mr. REED. Mr. Chairman: I would like to submit that the amendments adopted May 11th are better than the amendments adopted in November, because the amendments adopted in November

do not provide any way in which the convention can be called, whereas the May amendment provided that the legislature might call a convention.

I move to substitute the section as adopted at the sessions beginning May 11th for the section as read by the secretary. That section reads:

"Whenever a majority of the members elected to each branch of the general assembly shall think it necessary to call a convention to revise, amend or change this constitution, they shall recommend to the electors to vote for or against a convention at the next election for representatives; and if a majority of all the electors voting at said election shall have voted for a convention, the general assembly shall, at its next session, provide by law for calling the same; and such convention shall consist of a number of members equal to that of the most numerous branch of the general assembly."

Mr. PEPPER. Mr. Chairman: I second the substitute.

The CHAIRMAN. Do you want to leave the last clause of the sentence in?

Mr. REED. No. I do not suppose I would leave that in. The difficulty is that the November amendment does not seem to provide clearly for the calling of the convention. It says, "The times and methods of such voting and election and the composition of the convention shall be prescribed by law." But the initiative force, so to speak, is not provided for.

The CHAIRMAN. If the last clause of the May 11th amendment were striken out could not that cover the situation?

SECTION POSTPONED.

Mr. REED. I think so; yes, sir. Mr. Chairman, I move that the further consideration of this section be postponed until after recess.

Mr. PEPPER. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE XVIII-A, SECTION 23-D.

The commission proceeded to the consideration of section 23-D of article XVIII-A.

The secretary read the section as follows:

SPECIAL COMMISSIONS PROHIBITED.

1 Section 23-D. No law shall delegate to a special commission, corporation or
2 association a power to perform a municipal function, make, supervise or inter-
3 fere with a municipal improvement, municipal property or money, whether held
4 in trust or otherwise.

On the question,

Will the commission agree to the section?

Mr. ENGLISH. Mr. Chairman: I move that the section be adopted.

Mr. SULZBERGER. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE XVIII-A SECTION 1.

The commission proceeded to the consideration of section 1 of article XVIII-A.

The secretary read the section as follows:

KINDS OF MUNICIPALITIES.

1 Section 1. Municipalities shall be counties, cities, boroughs, townships, school
2 districts, poor districts and all divisions of the commonwealth for the purpose
2 of local government.

On the question,

Will the commission agree to the section?

Mr. CARSON. Mr. Chairman: Is not that second line in the section rather obscure, "all divisions of the commonwealth for the purpose of local government" shall be regarded as municipalities? It strikes me that is very indefinite.

The CHAIRMAN. Our investgation has shown us that there are some incorporated towns in Pennsylvania that are not incorporated by special act of assembly, and if they have got to be classified as municipalities that may change their status.

Mr. CARSON. Then I like the language of May 11th amendment very much better.

The CHAIRMAN. That was acted upon for the reason that we did not wish to have any incorporated districts, and we voted that down after a good deal of debate, so that the boroughs around Pittsburgh would not be taken into corporated districts and saddled with debt that they did not want to assume.

Mr. CARSON. I confess I do not know without a great deal of study of the subject of a special kind if I could altogether define what was meant by "all divisions of the commonwealth for the purpose of local government." You might say such other divisions of the commonwealth as related to the purposes of local government.

Mr. ENGLISH. I think perhaps the difficulty of General Carson might be met by substituting the word "other" for the word "all."

Mr. CARSON. My last words were right in line with your thought.

Mr. ENGLISH. I therefore move to substitute the word "other" in line two for the word "all," so as to establish a necessary relationship between the divisions of the commonwealth for the purpose of local government and the kind of municipalities enumerated in the section.

Mr. CARSON. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE XVIII-A, SECTION 1-D.

The commission proceeded to the consideration of section 1-D of article XVIII-A.

The secretary read the section as follows:

CLASSIFICATION.

1 Section 1-D. The classification of municipalities according to population shall
2 not divide cities, counties or school districts into more than seven classes or other
3 municipalities into more than five classes. Municipalities may be classified upon

4 the basis of conditions requiring special regulation but no class shall be created
5 upon this basis containing only one city. The coincidence of the boundaries of
6 two or more municipalities shall be deemed a condition requiring special regula-
7 tion.
8 A law otherwise general shall not be local because applicable only to muni-
9 cipalities adopting it.
10 No law shall be held to be a local or special law which operates equally upon
11 every member of a class of municipalities.

On the question,

Will the commission agree to the section?

Mr. ALTER. Mr. Chairman: I move to substitute the following:

"Municipalities may be classified upon the basis of conditions requiring special regulation. The classification of municipalities according to population shall not divide cities, counties or school districts into more than seven classes or other municipalities into more than five classes. No Class of municipality shall be created containing only one municipality except upon the basis of population or upon the basis of the coincidence of the boundaries of two or more municipalities.

"A law otherwise general shall not be local because applicable only to muncipalities adopting it."

Mr. PEPPER. May I ask for delay just a moment to speak to Mr. Alter?

Mr. ALTER. Mr. Chairman: At the suggestion of Mr. Pepper I would like to change my motion by substituting for the second sentence of the proposed substitute this sentence: "A class must contain more municipalities than one, except where the basis of classification is population or coincidence of boundaries of two or more municipalities." That seems to be better language and accomplishes the same thing which the original language was intended to accomplish.

Mr. PEPPER. Mr. Chairman: I second the substitute.

The substitute was agreed to.

ARTICLE XVIII-A, SECTION 1-E.

The commission proceeded to the consideration of section 1-E of article XVIII-A.

The secretary read the section as follows:

PROPORTIONAL REPRESENTATION.

1 Section 1-E. Proportional representation may be prescribed by law for the
2 election of representative bodies in municipalities in which that method of elec-
3 tion shall be approved by a majority of the electors voting on the question.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE XVIII-A, SECTION 3.

The commission proceeded to the consideration of section 3 of article XVIII-A.

The secretary read the section as follows:

NEW COUNTIES.

1 Section 3. A new county shall not be established if it would have less than
2 three hundred square miles and fifty thousand inhabitants or if a line thereof
3 would pass within ten miles of the boundary of the county seat of a county
4 proposed to be divided or if its establishment would reduce another county below
5 such area, or population. A new county shall not be established without the
6 consent of a majority of the electors within the proposed boundaries voting on
7 the question.

On the question,

Will the commission agree to the section?

Mr. THORPE. Mr. Chairman: I am requested to make an amendment to section 3, to the effect that lines two and three and part of four, "or if a line thereof would pass within ten miles of the boundary of the county seat of a county proposed to be divided," shall be striken out. If this is seconded I will state the reasons.

Mr. PEPPER. Mr. Chairman: I will second the amendment.

On the question,

Will the commission agree to the amendment?

Mr. THORPE. Mr. Chairman: The petition and reasons are supplied by the county of Cambria and the city of Johnstown through the board of trade and certain attorneys and certain representatives of public opinion there who desire that their county be divided on account of topographical difficulties in arriving at their county seat of Ebensburg. The petition is based upon the theory that a division of the county would facilitate business and accommodate the people in both ends of the county; that access to the present county seat is difficult for parties in either the northern or central part of the county. The letter before me from an attorney who recently returned from a case in court at Ebensburg, who is somewhat serious in this matter, speaks of the difficulties of access, ingress and egress, and so forth. I therefore move, sir, that this language in the second, third and fourth lines be striken out, and otherwise the section to stand as written.

Mr. FOX. Well, it may perhaps work hardship in this particular case cited by Dr. Thorpe, but there are a number—

Mr. THORPE. It is not more than fair to say, of course, that there are counties in the commonwealth in which the county seat is not the geographic center. The crux of this whole matter is that access to the county seat as a geographic center is difficult and that the division of the county should be based upon topography and not upon mere geography. These I think, Mr. Justice Fox, are the principal arguments in favor of this proposition.

The CHAIRMAN. In small counties, geographically I do not know what might happen if you did not fix some limitation. You could dismember the county I live in and leave territory that would not be worth having.

Mr. CARSON. Have the gentlemen no suggestion as to reconciling the difficulties of a situation of which we Philadelphians have no knowledge? I mean to say you get a petition from Ebensburg like that and then find that what they want is not agreeable to Justice Fox's section of the state, and, as you intimate, would be a menace to your own county which is close to us. I think that those who are familiar with the difficulties of the local situation might have some useful suggestion for harmonizing the matter which we on the outside can not undertake properly to frame.

On the question recurring,
Will the commission agree to the amendment?
It was not agreed to.
On the question recurring,
Will the commission agree to the section?
It was agreed to.

ARTICLE XVIII-A, SECTION 3-A.

Mr. SULZBERGER. Mr. Chairman: I am sorry to say that I will not be able to be here this afternoon; but the next section for consideration is section 3-A, and in view of the enthusiasm with which my previous propositions for an amendment was received I do not care to miss the opportunity of presenting another. " Cities with a population exceeding ten thousand"—I just happened to write ten thousand, that may mean anything that the commission would see fit—"shall have the power to enact ordinances regulating the operation of automobies or motor vehicles within such cities, or any of the zones thereof, and such ordinances shall with respect to such cities be deemed to be an integral part of the general law of the commonwealth regulating automobile and motor vehicle traffic, and persons violating such ordinances shall be subject to the procedure, pains and penalties fixed by such general law."

In view of the difficulties of the situation and the mortality resulting therefrom, I think that cities beyond a certain number to be fixed ought to have the power to regulate the matter, because it is impossible for the gentlemen of the legislature to know in advance the details of each city.

Mr. PEPPER. Mr. Chairman: I second the amendment.

On the question,

Will the commission agree to the amendment?

The CHAIRMAN. If Judge Sulzberger offered that as a separate section, I think it would be better, because it is such a general section; section 3-A is a general home-rule section.

Mr. PEPPER. A sparate section to be entitled "safety first."

Mr. SULZBERGER. Mr. Pepper, does your suggestion mean "safety second"?

Mr. FISHER. Mr. Chairman: May I call Judge Sulzberger's attention to the fact that if we make this apply to cities of ten thousand then we will not make it apply to a great many boroughs of the commonwealth that have populations in excess of ten thousand. I think there are boroughs in the commonwealth that have a great deal more population than some cities. There are some cities that are not now up to ten thousand. Lock Haven, I think, is such a city.

Mr. SULZBERGER. I intended it to be a suggestion that would include all cities.

The CHAIRMAN. The understanding that the chair has of the law as it is today is that municipalities have the right under their interior police powers to regulate all vehicular traffic, and they do it in most of the cities of the state. They do in my own city, I am sure.

Mr. SULZBERGER. They can not punish them.

The CHAIRMAN. They can fine them, of course, and put them in jail.

Mr. GORDON. My learned friend from Philadelphia should, I think, when he proceeds to enact a criminal statute keep within reasonable distance of the ordinary principles governing criminal legislation. As I follow his amendment it is this, that when municipalities of ten thousand or more make municipal regulations affecting automobiles, those municipal regulations shall become a part of the statute of the state when such statute is passed so far as the penalties of the general statute are concerned. In other words, when a statute shall be passed by the legislature it may impose penalties for the doing of acts not stated in the statute, but the doing of acts regulated by any number of municipal ordinances, and the citizen would, therefore, find a penal statute imposing penalties upon him for he knows not what. Surely so good a lawyer, so profound a lawyer, as Judge Sulzberger would not think of doing that. The legislature has the power to regulate this matter, and if it does not choose to do it in the way that particular municipalities choose to do it and imposes the punitive part of the law upon those who break the statute, why should a citizen be obliged to look elsewhere than into the statute to find out where he would become criminally liable? Now, I suppose in the constitution we could do almost anything, but we ought to see to it that when we are enacting criminal statutes we do it in conformity with the well-recognized principles of criminal law in all civilized states. I was reflecting over the amendment in this hurried way, and it seems to me there will be confusion. There will be a want of certainty and there will be a liability to penalties by all users of automobiles which they would not have knowledge of before. I certainly think it would be a bad precedent to establish in the formation of a constitution.

Mr. SULZBERGER. All I can say is that I intended that some of them would be surprised.

The CHAIRMAN. If this shall be written into the constitutional law—

Mr. SULZBERGER. Into the ordinances.

The CHAIRMAN. If this is written into the constitutional law of the state, I am not quite sure what becomes of the state's regulation of the automobile traffic.

Mr. GORDON. That is gone.

The CHAIRMAN. It is gone, and the power to collect revenues from automobiles over a large portion of the state, amounting to over seven million dollars this year, I am afraid would be gone. I think it is a very serious problem.

Mr. CARSON. Do I understand the chair to say that in his view the regulations of the boroughs and of the towns through which the highways run are sufficiently ample to meet the case? I know that traveling along the state highways I see signs up, speed limit so much. Then you get to a certain point at the end of the borough where you are released from that restriction on your speed. That must be by virtue of some local regulation which gives fair notice to the traveler along the highway that he has got to slow down when he approaches the limits of the town, and when he is released from that he is out on the open highway again until he meets some limitation. I took a taxicab ride from Pittsburgh to Philadelphia in the month of April last, and I counted no less than forty-two of these notices which I saw the driver recognize. Now, I have not had any experience that

would enable me to judge of the question, but as I understand the chair he thinks that the local power already covers cases of this kind.

The CHAIRMAN. I know that it has in the cities of the third class, the kind of a city I live in. They regulate vehicular traffic as to what streets it shall go on, at what speed, and where the cars shall be permitted to park, and it is true in boroughs.

Mr. REED. Cities of the second class do it.

Mr. GORDON. That is not the provision Judge Sulzberger has presented. This is a provision that if the state legislature shall pass a general automobile law to impose penalties for violation of that law that penalty shall also be the penalty for the violation of any municipal regulations throughout the commonwealth, and surely that is not good legislation in any criminal case.

Mr. ENGLISH. Mr. Chairman: As I understand the present state law there is a general statute which covers this entire field, but that does not take away from the municipalities their general police power in the matter of the regulation of traffic on the streets, except in two particulars. There is a proviso in the statute that where the municipality undertakes to impose a speed limit which is different from that in the general act there must be a notice conspicuously posted on the various highways to that effect, and the other limitation is as to the penalty which may be imposed. Now if that penalty is inadequate for punishment, thirty days' imprisonment or one hundred dollars fine is not adequate for the violation of a municipal ordinance, it seems to me that the remedy, which is purely legislative, is a simple one. The period of imprisonment could be increased or the fine increased; but for a violation of the state law there is a different penalty. I understand that for a violation of many sections of the general act there is a penalty of imprisonment up to a period of a year, and I do not see anything about this proposition, therefore, that is not covered in one way or another by the present law.

On the question recurring,

Will the commission agree to the amendment?

It was not agreed to.

RECESS.

Mrs. MILLER. Mr. Chairman: I move that the commission do now take a recess until 2 o'clock P. M.

Mr. VOLL. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 1.15 o'clock P. M., the commission took a recess until 2 o'clock P. M.

AFTER RECESS.

The commission reconvened at 2 o'clock P. M.

The Chairman, William I. Schaffer, in the chair.

The CHAIRMAN. The hour fixed for the reconvening of the commission having arrived, the commission will be in order.

Have the gentlemen who are considering the re-drafting of the section relating to the oath of public officers re-drafted the section?

Mr. PEPPER. Yes, sir, Mr. Chairman; and I venture to propose the following amendment to section 3-D or article XII:

ARTICLE XII, SECTION 3-D.

The commission resumed consideration of section 3-D of article XII.

The secretary read the section as follows:

OFFICIAL OATH—HOW ADMINISTERED.

1 Section 3-D. Members of the general assembly, officers of the state govern-
2 ment and county officers shall, before entering on the duties of their offices, take
3 and prescribe the following oath or affirmation: "I do solemnly swear (or af-
4 firm) that I will support, obey and defend the constitution of the United States
5 and the constitution of the commonwealth; and that I will discharge the duties
6 of my office with fidelity; that I have not paid or contributed, or promised
7 to pay or contribute, either directly or indirectly, any money or other valuable
8 thing to procure my nomination or election (or appointment), except for neces-
9 sary and proper expenses expressly authorized by law; that I have not knowingly
10 violated any election law of this commonwealth, or procured it to be done by
11 others in my behalf; that I will not knowingly receive, directly or indirectly,
12 any money or other valuable thing for the performance of non-performance of
13 any act or duty pertaining to my office other than the compensation allowed
14 by law."
15 The foregoing oath shall be administered by a person authorized to administer
16 oaths. In the case of officers of the state government and of judges of the
17 supreme court and of the superior court, the oath shall be filed in the office
18 of the secretary of the commonwealth, and in the case of other judicial officers
19 and of county officers, in the office of the prothonotary of the county in which
20 it is taken. A person refusing to take such oath or affirmation shall forfeit his
21 office. Any person who shall be convicted of having sworn or affirmed falsely,
22 or of having violated such oath or affirmation, shall be guilty of perjury and
23 shall be forever disqualified from holding any office of trust or profit in the
24 commonwealth. The oath shall be administered to a member of the general as-
25 sembly by a judge of the supreme court or of a court of common pleas, in the
26 hall of the house to which the affiant has been elected.

On the question recurring,

Will the commission agree to the section?

Mr. PEPPER. Mr. Chairman: The amendment is to strike out all of the section after the word "fidelity" in line six, so that the oath will read, "I do solemnly swear (or affirm) that I will support, obey and defend the constitution of the United States and the constitution of the commonwealth, and that I will discharge the duties of my office with fidelity."

Mr. GORDON. Mr. Chairman: I second the amendment.

On the question,

Will the commission agree to the amendment?

Mr. REED. Mr. Chairman: Without any desire to start a debate I would suggest to Mr. Pepper that possibly it would be well to add to that the last clause of the oath, "that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office other than the compensation allowed by law."

Mr. PEPPER. It seems to me, Mr. Chairman, that that weakens the effect of what goes before in the oath as to the discharge of duties of office with fidelity. You then proceed to specify one of the innumerable ways in which you might be guilty of a lack of good faith, or worse, in the performance of duty. I do not see why we should select among all the possible breaches of fidelity the single case of taking money for influencing official action. I think it is really stronger, if Judge Reed will permit me to say so, as it stands in its simplicity than if we introduce after the climax some specification of a particular class of offenses.

Mr. REED. As I remember it, the oath taken by the federal judges is that they would not decide any one's case for lucre or malice.

Mr. PEPPER. It is true in the case of attorneys-at-law that we take an oath that we will not betray any man's cause for lucre or malice. It seems to me that it owes its character to the fact that it is the oath of a paricular class of officials. Here is an oath that is to be taken alike by judicial officers, by executive officers of the commonwealth, and still by others, and I think we have to be more general in the terms.

Mr. REED. I do not insist on it, I only wanted to call your attention to it.

On the question recurring,

Will the commission agree to the amendment?

It was agreed to.

On the question,

Will the commission agree to the section as amended?

It was agreed to.

RECONSIDERATION OF VOTE.

The CHAIRMAN. This section we passed for the purpose of ascertaining what the exact language was in the recent amendment submitted.

Mr. ALTER. At your suggestion that was disposed of this morning.

The CHAIRMAN. Yes, that has been disposed of.

Mr. FISHER. Mr. Chairman: The secretary cal's my attention to the fact that it will harmonize the verbiage in the constitution if we adopt the language used in the section as adopted November 9th, beginning "Laws may be enacted to provide," instead of saying "The general assembly shall have the power by general laws to provide." I therefore move to reconsider the vote by which this section was adopted.

Mr. REED. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE XVI, SECTION 11.

The commission resumed consideration of section 11 of article XVI.

The secretary read the section as follows:

Section 11. The general assembly shall have the power by general law to provide for the incorporation of banks and trust companies, and to prescribe the powers thereof.

On the question recurring,

Will the commission agree to the section?

Mr. FISHER. Mr. Chairman: I move that the section as adopted at the sessions beginning November 9th, which reads as follows, be adopted:

"Section 11. Laws may be enacted to provide for the incorporation of banks and trust companies and to prescribe the powers thereof."

Mr. REED. Mr. Chairman: I second the motion.

The motion was agreed to.

RECONSIDERATION OF VOTE.

Mr. FISHER. Mr. Chairman: I beg to call attention again to section 9-B of article XVI. I offered an amendment so that the section read, "A foreign corporation shall not do business in this state

without having in the state a known place of business, and without making the secretary of the commonwealth the agent of the corporation on whom processes may be served." I would ask to substitute the word "an" before agent, for "the," making the section read, "an agent of the corporation." That would harmonize with the other amendment. I therefore move to reconsider the vote by which this section was adopted.

Mr. ENGLISH. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE XVI, SECTION 9-B.

The commission resumed consideration of section 9-B of article XVI.

The secretary read the section as follows:

FOREIGN CORPORATIONS.

1 Section 9-B. A foreign corporation shall not do business in this state with-
2 out having in the state a known place of business. The secretary of the com-
3 monwealth shall be the agent of the corporation upon whom process may be
4 served.

On the question recurring,

Will the commission agree to the section?

Mr. FISHER. Mr. Chairman: I move to amend the section by inserting the word "an" before the word "agent," in place of the word "the," making the section read "an agent of the corporation."

Mr. ENGLISH. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE V, SECTION 3.

The commission resumed consideration of section 3 of article V.

The secretary read the section as follows:

JURISDICTION OF SUPREME COURT.

1 Section 3. The jurisdiction of the supreme court shall extend over the state,
2 and the judges thereof shall, by virtue of their offices, be justices of oyer and
3 terminer and general jail delivery in the several counties; they shall have
4 original jurisdiction in cases of injunction where a corporation is a party de-
5 fendant, of habeas corpus, of mandamus to courts of inferior jurisdiction, and of
6 quo warranto as to officers of the commonwealth whose jurisdiction extends over
7 the state, but shall not exercise other original jurisdiction; they shall have
8 appellate jurisdiction by appeal, certiorari or writ of error in all cases, as pre-
9 scribed by law.

On the question,

Will the commission agree to the section?

Mr. PEPPER. Mr. Chairman: It will be remembered that we had under consideration the final clause in section 3 of article V, which reads as follows: "They shall have appellate jurisdiction by appeal, certiorari or writ of error in all cases, as prescribed by law." The desire was to avoid the difficulty which arises in connection with the use of the phrase "prescribed by law," and when a proposal to remedy that difficulty was made Mr. Alter called attention to the fact that the proposal took no account of the feature that it was

desired to preserve, namely, a constitutional declaration of the supervisory power of the supreme court in all cases, however the jurisdiction might be exercised as respects the manner or method of its exercise. After conference with Mr. Alter I now propose a substitute for the last three lines of section three beginning with the words, "they shall have appellate jurisdiction," the following to stand as a new sentence, the final sentence of the section: "The supreme court sha l have jurisdiction to review in all cases the action of other courts, and until otherwise prescribed by law the manner of exercising such jurisdiction shall be that prescribed when this constitution becomes effective." I move the adoption of this amendment.

Mr. ALTER. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the commission agree to the section as amended?

Mr. PEPPER. Mr. Chairman: I should like to ask the attorney general, through you, whether it is desirable to retain in the body of section 3, line three, the word "they," which at presest appears there. It reads, "The jurisdiction of the supreme court shall extend over the state, and the judges thereof shall, by virtue of their offices, be justices of oyer and terminer and general jail delivery in the several counties; they shall have original jurisdiction in cases of injunction where a corporation is a party defendant, of habeas corpus, of mandamus to courts of inferior jurisdiction," and so forth. It occurs to me that the jurisdiction is not the jurisdiction of the judges, but the jurisdiction of the court. It ought to be the supreme court that has the jurisdiction which may be exercisable through individual justices, but there seems to me something anomalous in describing the jurisdiction of the judges, and I wanted rather to inquire than to make a motion on the subject.

Mr. ALTER. I think that is fairly correct.

Mr. REED. We had that up before. We had that up at the last meeting. You were not here, Mr. Pepper, and it was purposely changed back to the language of the old constitution, because if it was left the courts should have jurisdiction in all cases of injunction, mandamus, and so on, and habeas corpus, it seemed to those who were here then that that requires the court to act in those cases instead of permitting an individual judge to issue a writ of habeas corpus or injunction, possibly.

Mr. ENGLISH. I merely wish to call your attention to the fact that the particular writs referred to in this part of the section are writs that are customarily issued by the individual judges.

Mr. PEPPER. Because I had doubts about that particular point I made the inquiry; and yet even if the writ is issued by the action of an individual judge, the cause is entitled in the supreme court—

The CHAIRMAN. Mr. Pepper, the thought of conferring jurisdiction is in the preceding clause, "and the judges thereof shall, by virtue of their office," and the only case that I recall was the case of the Pittsburgh riots, when Chief Justice Paxson went to Pittsburgh.

Mr. PEPPER. In the matter of the treason cases?

The CHAIRMAN. In the matter of the treason cases, and Justice Paxson exercised the jurisdiction as an individual judge. There may be reasons, I do not know if there are, but there may be reasons for giving the individual judge this authority so that he might move in

cases of great emergencies alone, rather than be compelled to gather the court together to do something that, when the court did get together, it might be too late.

Mr. PEPPER. I will not press the point.

The CHAIRMAN. I am not certain.

Mr. FISHER. Would it relieve the difficulty if instead of "they" we substituted the words, "the court or any justice thereof?" Would that clarify it?

Mr. GORDON. I think it would, sir.

Mr. FISHER. "The supreme court or any justice thereof," and I move the amendment.

Mr. CONNELLY. Mr. Chairman: I second the amendment.

On the question,

Will the commission agree to the amendment?

Mr. GORDON. Mr. Chairman: If Mr. Pepper will permit me, I would like to agree with him. I think his analysis of this section is correct. I will take the liberty of reading it, "The jurisdiction of the supreme court shall extend over the state,"—that has relation to the jurisdiction of the court—"and the judges thereof shall, by virtue of their offices, be justices of oyer and terminer and general jail delivery in the several counties;"—that is conferring the power upon the justices, that must be on the individual justices—"they"—that must mean the individual justices—"shall have original jurisdiction in cases of injunction where a corporation is a party defendant,"—that must be in the court and not the justices; no justice is given original jurisdiction in cases where a corporation is a defendant; it is the court which has, and also that the court has original jurisdiction "of habeas corpus,"—of course it has—"of mandamus to courts of inferior jurisdiction,——mandamus is issued by the whole court, and not by a judge,—"and of quo warranto as to officers of the commonwealth whose jurisdiction extends over the state,"—that certainly relates to the jurisdiction of the whole court, and not to any particular judge—"but shall not exercise other original jurisdiction;" so that that can be taken to mean collectively the whole court, and if it is used in that sense, it is well used, but if it is used in the sense of a particular justice I think Mr. Pepper is right in his criticism.

Mr. PEPPER. In order to make the matter clear I move, sir, a further amendment in section 3, by making the first sentence end with the words "several counties," in line three, and then beginning a new sentence, substituting the words "The court" for the word "they." "The court," or perhaps better to keep the phraseology of the title, "supreme court," "The supreme court shall have original jurisdiction," and then I take it, Mr. Chairman, that it is quite within the powers of the court to authorize one of its members to sit in the exercise of that jurisdiction if it is thought proper.

Mr. CARSON. Before the vote is taken may I call Mr. Pepper's attention to the language of section 2 of article III of the constitution of the United States. After declaring where the judicial power of the United States is vested, then it comes in, "The judicial power shall extend to all cases," and then enumerates them, and then declares that in certain cases the jurisdiction shall be original, and the others shall be appellate. That is the classification there.

Mr. PEPPER. Yes, sir; well, we follow that here.

Mr. CARSON. You do follow it?

Mr. PEPPER. You see, sir,—

Mr. ALTER. Mr. Chairman: The suggestion of Judge Gordon that the word "they" where first used in the section, line three, refers to the court, and not to the individual judges, is strenghtened by the use of the same word at the beginning of the last clause in the present constitution, where it can not refer to anything but the court, because it relates to its general appellate jurisdiction.

Mr. PEPPER. Judge Gordon suggests that the word "it" be substituted for "they." I think that will make the point clear without repeating the words "supreme court." I move that that amendment be made.

Mr. KELLY. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question recurring,

Will the commission agree to the section as amended?

It was agreed to.

RECONSIDERATION OF VOTE.

Mr. PEPPER. Mr. Chairman: Would it be your pleasure to deal with section 3-J under this same article before passing on?

The CHAIRMAN. Yes, sir.

Mr. PEPPER. That is the statement of the jurisdiction of the superior court, and one of the cases in which we need to make a clarifying amendment. The language of the section as adopted at the sessions beginning November 9th is that, "The superior court shall have jurisdiction as prescribed by law." Yesterday that was amended in a certain way. I would, therefore, move to reconsider the vote by which this section was adopted yesterday.

Mr. GORDON. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE V, SECTION 3-J.

The commission resumed consideration of section 3-J of article V.

The secretary read the section as follows:

JURISDICTION OF SUPERIOR COURT.

1 Section 3-J. The superior court shall have jurisdiction as prescribed by law.

On the question recurring,

Will the commission agree to the section?

Mr. PEPPER, Mr. Chairman: I move to amend by substituting as follows: "Until otherwise prescribed by law the superior court shall have the jurisdiction vested in it when this constitution becomes effective."

Mr. GORDON. Mr. Chairman: I second the substitute.

The substitute was agreed to.

RECONSIDERATION OF VOTE.

Mr. PEPPER. Mr. Chairman: There is still one provision on the same subject as this with which we have to deal which relates to section 5-C of article V. At present the amendment which we have

made to the section reads as follows: 'I refer now to the last sentence of the paragraph, 'in addition to the powers in this section conferred the court of common pleas shall have other jurisdiction as prescribed by law." I move to reconsider the vote by which this section was adopted.

Mr. FISHER. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE V, SECTION 5-C.

The commission resumed consideration of section 5-Cor article V. The secretary read the section as follows:

JURISDICTION OF COURTS OF COMMON PLEAS.

Section 5-C. The courts of common pleas of each county shall have original jurisdiction in civil cases except where such jurisdiction shall be vested by law in other courts. It shall have power to issue writs of certiorari to justices of the peace and to inferior courts not of record and, except where otherwise prescribed by law shall have jurisdiction in appeals from justices of the peace. It shall have such other jurisdiction as may be prescribed by law.

A judge of the court of common pleas shall be, in the county, a justice of the peace as to criminal matters.

In addition to the powers herein conferred the court of common pleas shall have and exercise, subject to such changes as may be made by law, such chancery powers as are now vested by law in the several courts of common pleas of the commonwealth, or as may hereafter be conferred upon them by law.

On the question recurring,

Will the commission agree to the section?

Mr. PEPPER, Mr. Chairman: I move to amend the section as follows: "In addition to the powers conferred in this section, and until otherwise prescribed by law, the courts of common pleas shall have the jurisdiction vested in them when this constitution becomes effective." It is merely to conform the declaration in the case of the courts of common pleas to the declaration in the case of the superior court and the supreme court.

Mr. FISHER. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the commission agree to the section as amended?

It was agreed to.

RECONSIDERATION OF VOTE.

Mr. PINCHOT. Mr. Chairman: Judge Reed was kind enough to call my attention to a thought in section 2-B¼ of article XVII. Because I misunderstood his reference I did not get the point, and I should like to move to reconsider the vote by which that section was adopted.

Mr. KELLY. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE XVII, SECTION 2-B¼.

The Commission resumed consideration of section 2-B¼ of article XVII.

The secretary read the section as follows:

PREFERENCES AND REBATES PROHIBITED.

1 Section 2-B¾. No discrimination in charges or facilities for transportation
2 shall be made between transportation corporations and individuals, or in favor
3 of either, by abatement, drawback or otherwise, and no railroad or canal cor-
4 poration, or any lessee, manager or employe thereof, shall make any preferences
5 in furnishing cars or motive power.

On the question recurring,

Will the commission agree to the section?

Mr. PINCHOT. Mr. Chairman: I move to eliminate the words "cars or motive power," and substitute the word "transportation."

Mr. REED. You mean transportation facilities.

Mr. PINCHOT. They are one, transportation or transportation facilities.

Mr. PEPPER. In the section facilities is used rather in a technical sense. "Facilities of transportation" has regard to physical objects.

Mr. PINCHOT. In service—

Mr. PEPPER. It is discrimination in service, preference in service that is intended.

Mr. PINCHOT. Well, I will gladly accept that change, Mr. Chairman.

Mr. KELLY. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE XVIII, SECTION 2.

The commission resumed consideration of section 2 of article XVIII.

The secretary read the section as follows:

CONSTITUTIONAL CONVENTION.

1 Section 2. A new constitution, or amendments to this constitution or a re-
2 vision thereof may be proposed by a convention authorized by law and com-
3 posed of delegates chosen by the electors of the commonwealth. Such conven-
4 tion shall be held only with the approval of a majority of the electors of the
5 commonwealth voting on the question of calling the convention. The new con-
6 stitution, the amendments or the revised constitution proposed by the conven-
7 tion shall become effective only when ratified by a majority of the electors of
8 the commonwealth voting thereon. The times and methods of such voting and
9 election and the composition of the convention shall be prescribed by law.

On the question recurring,

Will the commission agree to the section?

SECTION POSTPONED.

Mr. REED. Mr. Chairman: I will ask your indulgence for a few moments with reference to this section, if you can pass to something else.

The CHAIRMAN. This section will be passed for the present. It will be called up by Judge Reed when he is ready.

ARTICLE XVIII-A, SECTION 3-A.

The commission proceeded to the consideration of section 3-A of article XVIII-A.

The secretary read the section as follows:

HOME RULE FOR CITIES.

1 Section 3-A. Laws may be enacted giving to cities or to cities of a particular
2 class, authority to frame, adopt and amend charters for their organization and
3 government.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE XVIII-A, SECTION 4.

The commission proceeded to the consideration of section 4 of article XVIII-A.

The secretary read the section as follows:

CREATION AND CHANGE OF BOUNDARIES OF CITIES AND BOROUGHS.

1 Section 4. A city or borough shall not be established or its boundaries changed
2 except with the consent of a majority of the electors resident within the pro-
4 posed boundaries voting on the question and of a majority of the electors voting
4 on the question in any proposed added or excluded area.

On the question,

Will the commission agree to the section?

Mr. ENGLISH. Mr. Chairman: I should like to move a purely formal amendment to this section in the interest of a little clearer arrangement. I therefore move to amend section 4 so that it will read as follows: "A city or borough shall not be established or its boundaries changed except with the consent of a majority of the electors resident within the proposed boundaries voting on the question, and of a majority of the electors in the proposed added or excluded areas voting on the question."

Mr. GORDON. Mr. Chairman: I second the substitute.

The substitute was agreed to.

ARTICLE XVIII-A, SECTION 6-A.

The commission proceeded to the consideration of section 6-A of article XVIII-A.

The secretary read the section as follows:

APPOINTIVE MUNICIPAL OFFICERS.

1 Section 6-A. Appointive officers in counties, cities, boroughs and townships
2 shall be appointed by an officer or agency of the municipality as prescribed by
3 law, except as in this constitution otherwise provided.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE XVIII-A, SECTION 6-B.

The commission proceeded to the consideration of section 6-B or article XVIII-A.

The secretary read the section as follows:

ACCOUNTABILITY OF MUNICIPAL OFFICERS.

1 Section 6-B. Laws shall be enacted providing for the strict accountability
2 of municipal officers, as well for the fees which may be collected by them as for
3 all public or municipal moneys which may be paid to them.

On the question,
Will the commission agree to the section.
It was agreed to.

ARTICLE XVIII-A, SECTION 6-C.

The commission proceeded to the consideration of section 6-C of article XVIII-A.

The secretary read the section as follows:

COUNTY OFFICERS.

Section 6-C. The officers of a county shall be three commissioners, three auditors or a controller, a sheriff, a coroner, a prothonotary, a register of wills, a recorder of deeds, a treasurer, a surveyor, a clerk of the orphans' court, a clerk of the court of quarter sessions of the peace and of the court of oyer and terminer and general jail delivery, a district attorney, and other officers prescribed by law.

In a county co-extensive with a city or included therein, any constitutional county office may be abolished by law and its duties and powers may be transferred to a city officer or officers.

On the question,
Will the commission agree to the section?
It was agreed to.

ARTICLE XVIII-A, SECTION 7.

The commission proceeded to the consideration of section 7 of article XVIII-A.

The secretary read the section as follows:

ELECTION OF CERTAIN COUNTY OFFICERS.

Section 7. Except as is in this constitution expressly provided, county officers shall be chosen by the electors of the county. Each shall hold office for four years from the first Monday of January succeeding his election or until his successor shall qualify. Vacancies shall be filled as prescribed by law. The sheriff and the treasurer shall not be eligible for the succeeding term.

On the question,
Will the commission agree to the section?
It was agreed to.

ARTICLE XVIII-A, SECTION 7-A.

The commission proceeded to the consideration of section 7-A of article XVIII-A.

The secretary read the section as follows:

COUNTY COMMISSIONERS AND COUNTY AUDITORS.

Section 7-A. Three county commissioners shall be elected in each county in the year 1923, one to serve for two years and two to serve for four years. Every four years thereafter, two commissioners shall be elected to serve for four years. In the year 1925, and every four years thereafter, one commissioner shall be elected to serve for four years. An elector shall vote for one candidate for commissioner except in the year 1923, when he shall vote for one candidate to serve for two years and one candidate to serve for four years. A vacancy in the office of commissioner shall be filled by the governor by the appointment of an elector of the county who has voted for the commissioner whose place is to be filled. In a county having auditors, they shall be elected and vacancies in the office of auditor shall be filled as in the case of commissioners.

On the question,
Will the commission agree to the section?
It was agreed to.

ARTICLE XVIII-A, SECTION 7-B.

The commission proceeded to the consideration of section 7-B of article XVIII-A.

The secretary read the section as fol'ows:

PHILADELPHIA PROTHONOTARY.

1 Section 7-B. The prothonotary of the county of Philadelphia shall be ap-
2 pointed by the judges of the court of common pleas of the county. He shall
3 hold office for three years but may be removed at the pleasure of the court. He
4 shall appoint assistants, only with the approval of the court. The salaries of
5 the prothonotary and of his assistants shall be paid by the county.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE XVIII-A, SECTION 8.

The commission proceeded to the consideration of section 8 of article XVIII-A.

The secretary read the section as follows:

RESIDENCE OF COUNTY OFFICERS.

1 Section 8. An appointive county officer shall have been a citizen and resident
2 of the county for one year before his appointment, if the county has been so
3 long established, but if it has not been so long established, then within the
4 limits of the county or counties out of which it has been taken.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE XVIII-A, SECTION 9.

The commission proceeded to the consideration of section 9 of article XVIII-A.

The secretary read the section as follows:

CERTAIN COUNTY OFFICERS TO KEEP OFFICERS IN COUNTY SEAT.

1 Section 9. The prothonotary, the clerk of the orphans' court, the clerk of the
2 court of quarter sessions of the peace and of the court of oyer and terminer and
3 general jail delivery, the recorder of deeds, the register of wills, the county
4 surveyor, and the sheriff shall keep their offices in the county seat.

On the question,

Will the commission agree to the section?

Mr. ENGLISH. Mr. Chairman: I move to strike out the word "county" in line three.

Mr. THORPE. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE XVIII-A, SECTION 10.

The commission proceeded to the consideration of section 10 of article XVIII-A.

The secretary read the section as follows:

COMPENSATION OF COUNTY OFFICERS.

Section 10. County officers shall be paid only by salary for services performed for the state government or for the county or for any other official service. Except as otherwise provided in this constitution, such salaries shall be prescribed by law. Fees received by county officers shall be paid into the treasury of the county or into the state treasury as prescribed by law.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE XVIII-A, SECTION 14-B.

The commission proceeded to the consideration of section 14-B of article XVIII-A.

The secretary read the section as follows:

SALARIES AND EXPENSES OF COUNTY OFFICERS IN A COUNTY CO-EXTENSIVE WITH A CITY.

Section 14-B. In a county co-extensive with a city or included therein, the county treasury and the city treasury shall be united in a single city treasury. The funds and obligations of the county shall be those of the city. The state or county officers whose salaries or the expenses of whose officers or courts shall be paid in whole or in part by the city, other than the judges of the court of common pleas and of the orphans' court, shall at such times as may be required in the case of city offices submit to the chief executive officer of the city estimates of their needs. The city shall control the amount to be expended on such salaries and expenses other than the court of common pleas and of the orphans' court. The salaries of county officers may be and of the judges shall be prescribed by law.

The judges of the court of common pleas and of the orphans' court shall likewise submit to the chief executive officer of the city estimates of so much of the expenses of their courts as shall be payable by the city.

On the question,

Will the commission agree to the section?

Mr. ENGLISH. Mr. Chairman: I move to amend section 14-B so that it will read as follows: "The officers of the state government or of a county whose salaries or the expenses of whose officers or courts shall be paid in whole or in part by the city, shall at such times as may be required in the case of city offices submit to the chief executive officer of the city estimates of their needs. The city shall control the amount to be expended for such salaries and expenses, except salaries prescribed by law, and the expenses of the courts of common pleas and of the orphans' courts." This amendment is merely a rescript of the section as it appears and is drawn in the interest of clearness of expression.

Mr. GORDON. Mr. Chairman: I second the substitute.

The subsitute was agreed to.

ARTICLE XVIII-A, SECTION 22.

The commission proceeded to the consideration of section 22 of article XVIII-A.

The secretary read the section as follows:

AMOUNT TO WHICH MUNICIPALITY MAY INCUR DEBT.

Section 22. A municipality may incur debt by borrowing money as prescribed by law or by an agency created by law with state-wide jurisdiction, if its aggregate debt for borrowed money would not then exceed the sum of:

(a) Ten per centum of the assessed value of the property therein taxable by or for the benefit of the municipality.

(b) An amount equal to that capital sum which, at the legal rate of interest and at such amortization charges as shall be prescribed by law would yield an amount equal to the net revenue derived by the municipality during the last preceding fiscal year from its public improvements.

(c) The amount of debt secured by liens on public improvements and imposing no obligation on the municipality, if the net revenue derived from such improvements has not been taken into account under paragraph (b).

(d) so much of any debt incurred within five years to acquire public improvements as an agency created by law with state-wide jurisdiction shall consider likely to be allowable under paragraph (b) within six years after its incurrence, if the net revenue derived from such improvements has not been taken into account under paragraph (b), and if such debt has not been taken into account under paragraph (c).

(e) The par value of the evidences of debt of the municipality, owned by it and pledged toward the payment of the principal of its debt.

(f) The amount of cash and the market value of investments owned by the municipality and the amount of the collectible debts due or to fall due owned by the municipality, in so far as such assets are pledged toward the payment of the principal of its debt.

(g) Eighty per centum of the amount which it is estimated as prescribed by law that the municipality will receive within five years from assessments against property benefited by public improvements, if such amount is pledged toward the payment of the principal of its debt and if it has not been taken into account under paragraph (f).

An indebtedness incurred by a municipality in excess of three per centum of the assessed value of the taxable property therein shall be approved by a majority of the electors thereof at a public election held as prescribed by law.

The term "incur debt," as used in this section, shall include an incurrence of new indebtedness, an extension of the maturity of a debt, a deferment of the payment of a debt, a change in the form of a debt, and an assumption of a debt.

A debt shall be deemed to be incurred at the time the "obligation to pay is entered into or the contract to extend, defer, change or assume an existing debt is made.

On the question,

Will the commission agree to the section?

Mr. REED. It was pretty thoroughly gone over in November.

On the question recurring,

Will the commission agree to the section?

It was agreed to.

ARTICLE XVIII-A, SECTION 23.

The commission proceeded to the consideration of section 23 of article XVIII-A.

The secretary read the section as follows:

DURATION AND PAYMENT OF DEBTS.

Section 23. A municipality shall not incur a debt maturing more than fifty years from its incurrence. The aggregate amount of principal and interest payable in respect to a debt in any year shall not be less than the amount payable in any later year unless the sinking fund method of amortization is authorized by law. Such sinking fund shall be sufficient to pay the accruing interest on such debt and annually to reduce the principal by a sum not less than three per centum of such principal. The money in such sinking fund shall be invested in the bonds of the United States, of the state government or of a municipality thereof.

On or before incurring a debt by borrowing money the municipality shall provide for the collection of an annual tax sufficient to pay the principal and interest as they fall due.

On the question,

Will the commission agree to the section?

Mr. FOX. Mr. Chairman: The word "incurrence" is used in the section, in the second line, and I ask just what Mr. Pepper substituted yesterday. Was it "creation" that was substituted for the word "incurrence?"

Mr. PEPPER. No, it should be "thereafter," "more than fifty years thereafter."

Mr. FOX. Mr. Chairman: I move to amend the section by substituting the word "thereafter" for the word "incurrence."

Mr. PEPPER. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the commission agree to the section as amended?

Mr. FISHER. The last sentence of the first paragraph reads, "The money in such sinking fund shall be invested in the bonds of the United States, of the state government or of a municipality thereof." I am not sure that is just what we want to do. It seems to me that we should strike out the word "shall" and make it "may," and then insert "only" after "invest," so that the sentence will read, "The money in such sinking fund shall be invested only in the bonds of the United States, of the state government or of a municipality thereof," and I move to so amend.

Mr. ENGLISH. Mr. Chairman: I should like to ask Senator Fisher if he does not think there would be some advantage in having a constitutional mandate that would make it the duty of the sinking fund commissioners to see to it that the sinking funds are invested; that is, I think, the purpose of the substitute.

Mr. McCORMICK. I agree with the position taken by Mr. English, because it would require the sinking fund commissioners to invest. Otherwise, the temptation to make deposits in local banks would be very great.

Mr. FISHER. That is true, but sinking funds may be in the possession of the authorities only for a very short period. Do we want to make it mandatory that they shall be invested immediately upon receipt even though they may be required to be employed in a short time? It seems to me that places too great a restriction. Of course, I concede if they are to be held for a time they ought to be invested, but that ought to be left to the discretion of the municipal authorities. If they do invest they should invest in the kind of securities here enumerated. That is the important thing. It is simply a question whether you want to give greater latitude to the municipal authorities in the time for making the investments. That is the purpose of my amendment, and to bring the question before the commission.

Mr. ENGLISH. I do not like to take up the time at this stage of the proceedings, but I trust the amendment will not carry. In actual practice the sinking fund installments are paid annually into the city sinking fund by the city treasurer, and where we have bonds maturing over a long period of time, twenty or twenty-five years, it ought to be the duty of the sinking fund commissioners within a short time to invest that money, if not in its own bonds then in securities of the United States or of the state, and it seems to me there ought to be a mandate in the constitution to make that beyond question; otherwise the money will be allowed to remain there until the bonds mature, drawing only the ordinary interest that the bank

is willing to pay, or the depository of the state is willing to pay for the money. I know from our examination of the subject and from information that we have secured through the bureau of municipal research that sinking funds in Pennsylvania are not very carefully administered, and there ought not to be any letting down of the bars so far as the discretion of the officers is concerned. They ought not to have any discretion except possibly as to which of the three classes of securities the money is to be invested in; and I therefore trust the amendment will not prevail.

On the question recurring,

Will the commission agree to the amendment?

It was not agreed to.

On the question recurring,

Will the commission agree to the section as amended?

It was agreed to.

RECONSIDERATION OF VOTE.

Mr. THORPE. Mr. Chairman: Will you permit me to turn back to section 22 of article XVIII-A, line three, just a moment? The English there is a little questionable, "for borrowed money would not then exceed the sum of." Would it not be better English for it to read "if its aggregate debt for borrowing money shall not exceed the sum of?" I do not want to be a purist in the matter, but this goes before the critics, and I would like to move, sir, to substitute the words "shall not" for "would not." I therefore move to reconsider the vote by which this section was adopted.

Mr. FOX. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE XVII-A, SECTION 22.

The commission resumed consideration of section 22 of article XVIII-A.

The secretary read the section as follows:

AMOUNT TO WHICH MUNICIPALITY MAY INCUR DEBT.

1 Section 22. A municipality may incur debt by borrowing money as prescribed
2 by law or by an agency created by law with state-wide jurisdiction, if its aggre-
3 gate debt for borrowed money would not then exceed the sum of:
4 (a) Ten per centum of the assessed value of the property therein taxable by
5 or for the benefit of the municipality.
6 (b) An amount equal to that capital sum which, at the legal rate of interest
7 and at such amortization charges as shall be prescribed by law would yield an
8 amount equal to the net revenue derived by the municipality during the last
9 preceding fiscal year from its public improvements.
10 (c) The amount of debt secured by liens on public improvements and im-
11 posing no obligation on the municipality, if the net revenue derived from such
12 improvements has not been taken into account under paragraph (b).
13 (d) So much of any debt incurred within five years to acquire public im-
14 provements as an agency created by law with state-wide jurisdiction shall
15 consider likely to be allowable under paragraph (b) within six years after its
16 incurrence, if the net revenue derived from such improvements has not been
17 taken into account under paragraph (b), and if such debt has not been taken
18 into account under paragraph (c).
19 (e) The par value of the evidence of debt of the municipality, owned by it
20 and pledged toward the payment of the principal of its debt.
21 (f) The amount of cash and the market value of investments owned by the
22 municipality and the amount of the collectible debts due or to fall due owned
23 by the municipality, in so far as such assets are pledged toward the payment of
24 the principal of its debt.

25 (g) Eighty per centum of the amount which it is estimated as prescribed by
26 law that the municipality will receive within five years from assessments against
27 property benefited by public improvements, if such amount is pledged toward the
28 payment of the principal of its debt and if it has not been taken into account
29 under paragraph (f).
30 An indebtedness incurred by a municipality in excess of three per centum
31 of the assessed value of the taxable property therein shall be approved by a
32 majority of the electors thereof at a public election held as prescribed by law.
33 The term "incur debt" as used in this section, shall include an incurrence
34 of new indebtedness, an extension of the maturity of a debt, a deferment of the
35 payment of a debt, a change in the form of a debt, and an assumption of a
36 debt.
37 A debt shall be deemed to be incurred at the time the obligation to pay is
38 entered into or the contract to extend, defer, change or assume an existing debt
39 is made.

On the question recurring,

Will the commission agree to the section?

Mr. THORPE. Mr. Chairman: I move to substitutte the words 'shall not" for "would not."

Mr. FISHER. Mr. Chairman: I second the amendment.

On the question,

Will the commission agree to the amendment?

Mr. ALTER. Mr. Chairman: There may be some difference in meaning. 'Shall not" might indicate a state of indebtedness when this additional borrowing is undertaken, and "would not" would indicate a state of indebtedness after the additional borrowing has taken place.

The CHAIRMAN. Is the amendment insisted upon?

Mr. THORPE. I only rose for information. If everyone understands what that means, I will not insist upon the amendment.

On the question recurring,

Will the commission agree to the section?

The section was agreed to.

Mr. FOX. Mr. Chairman: I move to substitute the word "thereafter" for the words "after its incurrence," in lines fifteen and sixteen.

Mr. PEPPER. Mr. Chairman: I second the amendment.

Will the commission agree to the section as amended?

On the question,

It was agreed to.

ARTICLE XVIII-A, SECTION 23-B.

The commission proceeded to the consideration of section 23-B of article XVIII-A.

The secretary read the section as follows:

DEBTS OTHER THAN FOR MONEY BORROWED.

1 Section 23-B. A municipality shall not incur a debt otherwise than by the
2 borrowing of money unless there has been an appropriation to pay the debt.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE XVIII-A, SECTION 23-C.

The commission proceeded to the consideration of section 3-C of article XVIII-A.

The secretary read the section as follows:

MUNICIPALITIES NOT TO BECOME STOCKHOLDERS IN CORPORATIONS OR ASSOCIATIONS, NOR LOAN CREDIT.

1 Section 23-C. A municipality shall not pledge or lend its credit to and shall
2 not be a stockholder or owner in a corporation or association. Except to dis-
3 charge municipal liabilities, it shall not appropriate money to assist a private
4 business enterprise.
5 The provision of this section shall not be construed to apply to the lease by
6 a municipality to a corporation of a public service facility for a rental depend-
7 ent on the earnings of the lessee if the corporation covenants to operate the
8 facility and an agency created by law to regulate public utilities approves the
9 lease.

On the question,

Will the commission agree to the section?

Mr. ALTER. Mr. Chairman: I move to amend the section by substituting after the first paragraph of the section, the following: "A municipality shall not pledge or lend its credit to a corporation, association or individual and shall not be a stockholder or owner in a corporation or association. Except to discharge municipal liabilities, it shall not appropriate money to assist a private business enterprise."

The purpose of this change is to extend the prohibition of extending credit to an individual as well as to a corporation or association. As it stands in the printed copy there is nothing to prevent a municipality from extending its credit to an individual, which I assume would not be desirable.

Mr. PEPPER. Mr. Chairman: I second the amendemnt.

The amendment was agreed to.

On the question,

Will the commission agree to the section as amended?

Mr. PINCHOT. Mr. Chairman: I move to strike out the whole of the second paragraph.

Mr. FISHER. Mr. Chairman: I second the amendment.

The CHAIRMAN. This section was put in because of a decision of the supreme court in Ohio.

Mr. PEPPER. Could a word be said in explanation of that?

Mr. PINCHOT. It could not.

The CHAIRMAN. The information we have at the desk is that it was deemed advisable by the authorities of the city of Philadelphia for the transit question in their hands, that this section should not be adopted. Does the secretary have any information?

Mr. PEPPER. I just wanted to make sure that it had received adequate consideration.

The SECRETARY. The paragraph was originally inserted by the commission as a result, I believe, of a suggestion of Director Twining, of the city of Philadelphia, to meet a particular transit situation. I received, as secretary, and transmitted to one or two members of the commission who had been interested in the matter, a statement from Director Twining, stating that on mature consideration he desired to withdraw his particular recommendation of the section because, as I think he expressed it in his letter, it would not remedy the situation in Philadelphia, and also for the principle that it was creating the power to loan money to a corporation, which it was the object of the first part of the section to prevent.

Mr. CARSON. There was a motion to strike that out?

Mr. CHAIRMAN. Yes, sir.

Mr. CARSON. I think it is a good motion. I never liked the insertion of this because it seemed to me to be an effort to tie up in advance some possible judicial situation by preventing the courts from entertaining it and by saying you can not look at that, it is not wise.

Mr. GORDON. What is to be stricken out?

The CHAIRMAN. The last paragraph.

Mr. PEPPER. The qualification.

Mr. GORDON. Dr. Lewis said that he had received a communication from Director Twining changing his mind on that subject. Is that right?

The SECRETARY. Yes, sir.

Mr. GORDON. I did not receive a copy of that communication, Mr. Lewis, but I do not know that the change of Mr. Twining's mind on that subject ought to be a reason for any change in the action of this commission. If I may regard this subject still open for discussion I would like to say a word upon it, Mr. Chairman.

The CHAIRMAN. Certainly.

Mr. GORDON. Mr. Chairman: I think if Mr. Carson reads the second section more carefully he will see that this is not intended to prevent judicial action or hide any matter from proper judicial inquiry. It is candidly, however, intended to make the first section inapplicable to the case of the rental of the high-speed transportation facilities now being constructed and hereafter to be constructed in the city of Philadelphia which are to be rented to an existing traction company or to any other operating company which may pay a satisfactory rental to the city, and it is intended, and very properly intended, to express the decision of this commission that that shall not be taken to be a lending of the credit of the city to a corporation, which it clearly is not. It is intended to prevent vexatious litigation in the city of Philadelphia which would be an obstruction to the extensive transportation facilities now under way in that city, and surely that is a desirable object. I do not know what the reason of Mr. Pinchot was for his motion. I rather gathered from the little colloquy that took place between himself and Mr. Pepper that his reasons were not clear to himself, and he is unable to explain to this commission. That being so I think his objection should also follow the private objection of Mr. Twining. I should like to move, Mr. Chairman, that the action of the commission in striking out this section be reconsidered.

The CHAIRMAN. It has not been striken out.

Mr. GORDON. It would be a very serious obstruction to the work that the city of Philadelphia is now engaged in and upon which millions have been spent and will be spent in its construction.

Mr. PINCHOT. Just to relieve the insatiable curiosity of my friend, Judge Gordon, I should like to explain that I know nothing whatever about it, and that I made the motion purely because I was asked to do so, and under similar circumstances should do so again.

On the question recurring,

Will the commission agree to the amendment?

It was not agreed to.

On the question recurring,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE XVIII-A, SECTION 23-C¼.

Mr. ALTER. Mr. Chairman: I desire to offer a section to follow 23-C to be numbered 23-C¼.

The secretary read the section as follows:

1 Section 23-C¼. Appropriations may be made by a municipality for the pay-
2 ment of pensions for the retirement of classes of officers and employes of the
3 municipality; for the relief of persons injured or damaged by surface subsidence
4 resulting from past or future mining of anthracite coal; for the payment to
5 funds under public control for the benefit of classes of persons who are to be
6 recipients of public assistance; and for the benefit of institutions owned and
7 controlled by the state government or a municipality.

Mr. ALTER. Mr. Chairman: I move the adoption of this section.

Mr. GORDON. Mr. Chairman: I second the motion.

On the question,

Will the commission agree to the motion?

Mr. ALTER. Mr. Chairman: The purpose of this proposed section is to give municipalities the same powers of making appropriations for special purposes which the proposed constitution gives to the state.

Mr. ENGLISH. May I ask the attorney general for some information? This section undertakes to authorize municipalities to appropriate money for the payment to the funds under public control for the benefit of classes of persons who are to be recipients of public assistance. I should like to ask for a little light as to the meaning of that clause. Do I understand that municipalities may appropriate money to a fund which it may create for any class of persons who are designated by the ordinance as persons who are to be the recipients of public assistance.

Mr. ALTER. I would suppose, Mr. Chairman, that any class of persons in need of aid from the municipality could be given that aid under this section.

Mr. ENGLISH. And as to the definition of those who compose that class of persons, the definition of the class to be exclusively within the council of the city?

Mr. ALTER. I do not know of any limitation upon it except that which might be imposed by statute perhaps.

Mr. ENGLISH. Then it seems to me, sir, that this is an extremely vague and an extremely broad purpose for which taxes may be appropriated.

Mr. ALTER. I agree with the gentlemen from Erie that it does seem to be rather a broad clause.

Mr. ENGLISH. Then, as I understand the last sentence, it would authorize a city to appropriate money for the benefit of institutions owned and controlled other than by the state government. Is not that going rather far away from the purpose for which municipal moneys ought to be used? It seems to me this section ought not to be adopted in its present form at least.

The CHAIRMAN. Speaking for the smaller municipalities of the state like third class cities,—this might be all right for cities of the

second class or cities of the first class. The revenues of the third class cities are now pretty well exhausted in paying for our purely municipal functions.

Mr. ALTER. This section was drafted by the secretary and presented by me with the thought that the commission might desire to give municipalities the power which the constitution gives to the state government with reference to appropriations. I am glad the gentleman from Erie has called attention to these features which have presented themselves to his mind. I am very far from clear in my own mind that it would be wise to adopt the section as it is, but it gives the commission an opportunity to consider the question of what, if any, powers it desires municipalities to have in this connection.

The SECRETARY. The language adopted in the amendment was suggested by your secretary to clear up what to him appeared to be a doubtful question as to how far the municipalities could go in the appropriation of money. In the section which has been referred to by Mr. English, the words are unquestionably somewhat indefinite. They are, however, taken by the secretary from the exact language which the commission has adopted in connection with appropriations made by the state, in article III, section 18-A, and it was for that reason that we used that language. There was no personal feeling of his own that that language should be adopted.

On the question recurring,

Will the commission agree to the section?

It was not agreed to.

Mr. GORDON. May I ask Mr. Alter or the secretary, in view of the amendment which Mr. Alter offered, whether there will be any authority in a municipality, if this constitution should be adopted to appropriate money for the payment of pensions for the retirement of clerks, officers or employes of a municipality?

The SECRETARY. There will not be.

The CHAIRMAN. As I understand the law as it is today, that is done under the city code; is it not, Mr. English?

Mr. ENGLISH. Yes, sir. May I also call Judge Gordon's—

Mr. GORDON. It is done by contributions made by the officials under the pension law in Philadelphia. Each employe makes his contribution to the fund, but there is no appropriation of public money.

Mr. REED. In Pittsburgh we have no appropriation of public money.

Mr. PEPPER. If you will permit me, a good many years ago, when I was representing the police and firemen's pension fund in Philadelphia, an appropriation by council was made to the fund and challenged by a taxpayer. The matter was litigated and an appeal taken from the decision of common pleas No. 4 affirming the right of the municipality to make the appropriation, and the supreme court affirmed the decision. Since that time municipal appropriations have been made to swell the police and firemen's pension fund. That is still a practice. In other words, that fund results from the joint contributions of members of the force and municipal appropriations.

Mr. REED. That is so in Pittsburgh.

Mr. GORDON. May I ask Mr. Pepper, if he has the information, or Mr. Alter, whether there would be any authority for payment of money for pensions to mothers in view of this?

Mr. CONNELLY. That is taken care of by the state.

ARTICLE XVIII-A, SECTION 23-E.

The commission proceeded to the consideration of section 23-E of article XVIII-A.

The secretary read the section as follows:

ASSESSMENTS OF BENEFITS FOR PUBLIC IMPROVEMENTS.

1 Section 23-E. Laws may be enacted authorizing assessments against prop-
2 erties which are specially and particularly benefited by public improvements
3 made by the state government or by a municipality, whether or not such prop-
4 erties abut upon such public improvements.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE XVIII-A, SECTION 23-F.

The commission proceeded to the consideration of section 23-F of article XVIII-A.

The secretary read the section as follows:

EXTENT OF LAND PERMITTED TO BE TAKEN FOR PUBLIC IMPROVEMENTS.

1 Section 23-F. When the public purpose for which land is taken can best be
2 attained by acquiring more land than the state government or the municipality
3 proposes to retain, the state government or the municipality, subject to regula-
4 tions prescribed by law, may take all the land which in its judgment is needed
5 for the attainment of such purpose and may dispose of portions thereof, sub-
6 ject to restrictions protective of the public purposes.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE XVIII-A, SECTION 23-G.

The commission proceeded to the consideration of section 23-G of article XVIII-A.

The secretary read the section as follows:

ZONING OF MUNICIPALITIES.

1 Section 23-G. Municipalities may be authorized by law to promote the general
2 welfare by regulating the location, size and use of buildings. For the purpose
3 of such regulations, a municipality may divide its territory into districts, to each
4 of which special regulations may be applied.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE XVIII-A, SECTION 23-H.

The commission proceeded to the consideration of section 23-H of article XVIII-A.

The secretary read the section as follows:

INCORPORATED DISTRICTS.

1 Section 23-H. A municipality may, as prescribed by law, contract with one
2 or more municipalities for the joint acquisition, construction, maintenance, super-

3 vision or operation of public property, and for the creation of agencies to effect
4 any of such purposes and the creation of such agencies as may be mutually
5 agreed upon for the good government of the municipalities. Such agencies shall
6 not levy taxes or borrow money. Every such contract shall name arbitrators.

On the question,
Will the Commission agree to the section?
It was agreed to.

ARTICLE XVIII-A, SECTION 23-I.

The commission proceeded to the consideration of section 23-I of article XVIII-A.

The secretary read the section as follows:

CONSTRUCTION OF STREET PASSENGER RAILWAYS IN CITIES, BOROUGHS OR TOWNSHIPS.

1 Section 23-I. A street passenger railway shall not be constructed in a city,
2 borough or township except with the consent of the municipality.
3 The provisions of this section shall not be construed to permit a restriction
4 on the power of the state government to regulate the operation of such a rail-
5 way.

On the question,
Will the commission agree to the section?
It was agreed to.

ARTICLE XVIII-A, SECTION 23-J.

The commission proceeded to the consideration of section 23-J of article XVIII-A.

The secretary read the section as follows:

ONE PLACE OF PAYING TAXES IN CITIES AND BOROUGHS.

1 Section 23-J. Laws shall be enacted to enable a taxpayer in each city and
2 borough to pay all municipal taxes at one office.

On the question,
Will the commission agree to the section?
It was agreed to.

ARTICLE XVIII-E, SECTION 1.

The commission proceeded to the consideration of section 1 of article XVIII-E.

The secretary read the section as follows:

CHARITABLE INSTITUTIONS AND AGENCIES.

1 Section 1. Laws shall be enacted providing for the maintenance of an efficient
2 system of institutions and agencies to care for residents of the commonwealth
3 who cannot care for and support themselves on account of physical or mental
4 infirmities or other misfortune and to prevent such infirmities and misfortunes
5 so far as possible.

On the question,
Will the commission agree to the section?
It was agreed to.

ARTICLE XVIII-E, SECTION 1-A.

The commission proceeded to the consideration of section 1-A of article XVIII-E.

The secretary read the section as follows:

PENAL AND CORRECTIONAL INSTITUTIONS.

1 Section 1-A. Humanity, sound public economy and just consideration for the
2 innocent dependents of persons deprived of their liberty, by judgment, decree or
3 sentence of any court, require that all such persons should, during their im-
4 prisonment, be afforded an opportunity for remunerative labor. Such laws shall
5 accordingly be enacted as may be necessary to give effect to this provision.

On the question,

Will the commission agree to the section?

Mr. GORDON. Mr. Chairman: I have been asked to propose an

The commission proceeded to the consideration of section 2 of amendment to this section, the following words to be added after the word "provision," the last in the section as printed. It is a reproduction of that which was in the draft of the constitution when we assembled last November, to add to this section, "and the conditions of imprisonment shall always be such as to promote the physical, mental and moral welfare of the prisoner." I am very glad to make that motion to amend.

Mr. REED. Mr. Chairman: I second the motion.

The amendment was agreed to.

On the question,

Will the commission agree to the section as amended?

It was agreed to.

ARTICLE XVIII-E, SECTION 1-A1.

Mr. GORDON. Mr. Chairman: At the same instigation I move to insert between section 1 and section 1-A the following section to be known as section 1-A1:

"Laws shall be enacted providing for the maintenance of an efficient system of penal and correctional institutions and agencies."

I do not see, I confess, the necessity or probably the utility of that additional section, but it is harmless, and therefore I do not hesitate to make the motion to adopt this section.

Mr. THORPE. Mr. Chairman: I second the motion.

The motion was agreed to.

ARTICLE XVIII-E, SECTION 2.

The commission proceeded to the consideration of section 2 of article XVIII-E.

The secretary read the section as follows:

SUPERVISION OF CHARITABLE, CORRECTIONAL AND PENAL INSTITUTIONS AND AGENCIES.

1 Section 2. Charitable, correctional and penal institutions and agencies and
2 other institutions and agencies for the care, relief or treatment of persons hav-
3 ing physical or mental infirmities, shall be subject to governmental inspection
4 and supervisory control. The power to enforce the law with respect to such
5 institutions shall be vested in one or more departments of the state government
6 or in such agencies as may be prescribed by law.

On the question,

Will the commission agree to the section?

It was agreed to.

ARTICLE XVIII-E, SECTION 3.

The commission proceeded to the consideration of section 3 of article XVIII-E.

The secretary read the section as follows:

HEALTH.

1 Section 3. The protection and promotion of the public health under modern
2 social, economic and industrial conditions, is essential to the well being of the
3 commonwealth and is hereby declared to be a primary duty of government.

On the question,

Will the commission agree to the section?

Mr. CARSON. Mr. Chairman: I want to ask why it is thought necessary to put in such a statement as that; I mean nobody challenges it, but if we put it in the constitution we ought to declare ourselves on some other points perhaps. I do not know what it means exactly. It is not a source of power, it is not an attempt to deal with the situation; it is just a declaration of faith in general terms.

Mr. REED. I hate to stop your honor's work, but section 3 which Mr. Carson has referred to has stirred up the fears of a large number of Christian Scientists. They think that it is a scheme of some of the regular physicians to interfere with the practice of medicine, or whatever they call it, by the Christian Scientist Church, so they handed me in Pittsburgh some amendments. The first one was to amend it by making it read, "The protection and promotion of the public health under modern social, economic and industrial conditions, is essential to the well-being of the commonwealth and is hereby declared to be a primary duty of government." The second one was to make it read, "For the protection and promotion of the public health under modern social, economic and industrial conditions, the general assembly shall have power to pass laws providing for sanitary conditions and for reasonable quarantine regulations." And the third one was, if the commission insisted on having this provision added to it, "but the right of an individual to select his own physician, or to employ whatever form of healing he chooses, shall not be restricted." Now, I agree with Mr. Carson that it doesn't mean anything special. I spoke to Dr. Martin about it last night, and he said it was the most important part of this constitution.

Mr. CARSON. Well, that is a doctor's view.

Mr. REED. Mr. Chairman: I would like to move, in order to keep my word with these people, the adoption of the amendment to make the section read, "For the protection and promotion of the public health under modern social, economic and industrial conditions, the general assembly shall have power to pass laws providing for sanitary conditions and for reasonable quarantine regulations." I guess they have that power anyhow. I do not know why we should put it in.

Mr. PEPPER. Mr. Chairman: I second the amendment.

On the question,

Will the commission agree to the amendment?

Mr. GORDON. It is putting a limit upon the legislative power with respect to the subject of public health.

Mr. REED. Suppose we try the other.

Mr. GORDON. Mr. Chairman: Since you, last night, in an address which a few of us were privileged to hear, assigned as the motive which induced Judge Reed to ask that the bill of rights be retained

as it was, that he was guided by a reverence for the instrument, I presume also his reverential feelings induced him to offer these amendments.

Mr. REED. I do not know what my feelings would be.

The CHAIRMAN. I understand Judge Reed has withdrawn his first amendment.

Mr. REED. Mr. Chairman: I now offer this: "The protection and promotion of the public health, under modern social, economic and industrial conditions, is essential to the well-being of the commonwealth and is hereby declared to be a primary duty of government."

Mr. GORDON. What is the change?

Mr. REED. Oh, there is actually little.

Mr. CARSON. And in addition it is Christian Science.

Mr. PEPPER. Mr. Chairman: I second the amendment.

On the question,

Will the commission agree to the amendment?

Mr. REED. Evidently there should be attached this rider, "The right of an individual to select his own physician or to employ whatever form of healing he chooses shall not be restricted."

I move to strike this whole provision out.

Mr. McCORMICK. An attorney representing, as I understood, the Christian Science Church, submitted to me what he supposed was a copy of this section, and in that copy he had the words, "declared to be the primary duty of government," and when I showed him the correct copy, "a primary duty," not making it mandatory as "the primary duty," it seemed to me that at least he did not think it to be as dangerous as he first supposed, and he did not care to press the matter.

Mr. REED. That is probably what this means.

Mr. GORDON. I hope this will not be stricken out. There has been considerable levity in the discussion of this proposition.

Mr. REED. At my expense.

Mr. GORDON. For which I am responsible. But, Mr. Chairman, it is the litany of social altruism, and it is a declaration which may well be put in the fundamental law. Anybody familiar with the legislation of the past eight years will know the opposition which measures intended to protect child labor and to protect the labor of others in the industries of the state have met. Such measures have always met opposition in the legislature, and potent influences have always resisted such legislation; but it is true, as stated in this provision, that modern social, economic and industrial conditions have placed a new obligation upon government, and that the growth of our industries and the growth of the state in wealth through those modern industries should not be marked by a degradation of the public health, but that the youth and women and others shall be the special care of the commonwealth in guarding them from the dangers, the harm and the necessary menace that there is to life and health in modern social conditions; and this is merely writing that into the fundamental law so that all those who read the constitution may see it and be impressed with it, and it is the commonwealth speaking, the people speaking, and saying that this thing is a primary duty of government, and surely it is; it is that which preserves the health of the people, insures safety to their lives, and protects them from the dangers which walk at noonday as well as in the night, and that these condi-

tions shall be warded off so far as wise legislation can ward them off. I regard this declaration which, I say on my own responsibility, as admirable in all respects; and the last action of this body can not be more commendable than to let this remain in the constitution.

Mr. REED. Mr. Chairman: I withdraw the amendment.

On the question recurring,

Will the commission agreed to the section?

It was agreed to.

ARTICLE XVIII, SECTION 2.

The commission resumed consideration of section 2 of article XVIII.

The secretary read the section as follows:

CONSTITUTIONAL CONVENTION.

1 Section 2. A new constitution, or amendments to this constitution or a revi-
2 sion thereof may be proposed by a convention authorized by law and composed
3 of delegates chosen by the electors of the commonwealth. Such convention shall
4 be held only with the approval of a majority of the electors of the common-
5 wealth voting on the question of calling the convention. The new constitution,
6 the amendments or the revised constitution proposed by the convention shall
7 become effective only when ratified by a majority of the electors of the com-
8 monwealth voting thereon. The times and methods of such voting and election
9 and the composition of the convention shall be prescribed by law.

On the question recurring,

Will the commission agree to the section?

Mr. REED. Mr. Chairman: I wish to offer this amendment to the article in reference to a constitutional convention, article XVIII, section 2, so that it will read: "The general assembly may recommend to the electors of the commonwealth to vote for or against a convention for the framing of a new constitution or amendments to this constitution, or a revision thereof. Such convention shall be held only with the approval of a majority of the electors of the commonwealth voting on the question of calling the convention, which shall be composed of delegates chosen by the electors of the commonwealth A new constitution, amendment or revision of the constitution proposed by the convention shall become effective only when ratified by a majority of the electors of the commonwealth voting thereon. The times and methods of such voting and election and the composition of the convention shall be determined by the general assembly with the consent of the majority of the members elected to each house." In other words, it is a composite of the two sections.

Mr. PEPPER. Mr. Chairman: I second the substitute.

The substitute was agreed to.

CONCLUDING SECTION.

The commission proceeded to the consideration of the concluding section.

The secretary read the section as follows:

CONCLUDING SECTION.

1 Wherever a term in the masculine form is used in this constitution, it refers
2 to men and women alike.

On the question,

Will the commission agree to the section?

It was agreed to.

REPORT OF THE COMMISSION.

The CHAIRMAN. That disposes of all the business of the commission except a resolution to be offered, as I understand it, covering the adoption of the report. Now, the report is drafted and is before the members of the commission for their consideration and approval. If it be approved the thought of the chair is that, as we have now taken final action on the entire draft of the constitution, it will not be necessary to call the members together to sign the report. I will send a messenger with the report, if the commission approves it, to each one of the members so that it can be signed. My thought would be to have a signed copy for each member so it could be retained by the members of the commission.

Mr. REED. Mr. Chairman: There was an amendment to that report which I suppose everybody has had.

The CHAIRMAN. The matter now before the commission is a draft of the report to be submitted by the commission to the legislature. The secretary will read the report.

The secretary read the report as follows:

Commonwealth of Pennsylvania.

THE COMMISSION ON

Constitutional Amendment and Revision.

SUGGESTED REPORT

BY THE

COMMISSION

TO THE

GENERAL ASSEMBLY

Submitted by the Chairman for the Consideration of the Members of the Commission.

December 1, 1920.

REPORT OF THE COMMISSION ON CONSTITUTIONAL AMENDMENT AND REVISION

TO THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA.

To the members of the Senate and House of Representatives:

Your Commission was appointed by the governor on November 22, 1919, under the act of June 4, 1919, P. L. 388. The second motion of the act states our duties as follows:

"It shall be the duty of the Commission on Constitutional Amendment and Revision to study comprehensively and in detail the provisions of the present constitution in the light of modern thought and conditions with especial view of the necessity or advisability of changing or omitting any such provisions in order to obtain and secure for the people of this commonwealth a form of government best suited to their needs and most conducive to their welfare. If the commission find a change in the constitution advisable, it shall determine the best means of effecting such change, whether by amendment of particular sections or articles or by general revisions.

"The commission shall report to the general assembly at its next session of one thousand nine hundred and twenty-one, not later than the first Monday of February. The report shall contain in detail such recommendations as to the continuance, discontinuance, or modification of existing provisions, or the adoption of new provisions, as the commission from its investigations and study, shall deem advisable and proper. The report shall further contain drafts of any proposed amendments, or may contain the draft of a general revision."

PART I.

INTRODUCTORY SUMMARY.

The first meeting of the commission was held on December 9, 1919. This and all subsequent meetings have been public and, with the exception of one meeting at Scranton, have been held in the Senate Chamber at Harrisburg.

In April, a series of public hearings was held at which any citizen of the commonwealth who desired was given an opportunity to make suggestions. The suggestions thus received were most helpful.

The draft of a revised constitution which appears as Part II of this report was prepared after a comprehensive study of the present constitution "in the light of modern thought and conditions." The draft embodies those changes in the present constitution which we believe will "obtain and secure for the people of this commonwealth a form of government best suited to their needs and most conducive to their welfare."

No changes are recommended with respect to the general form of our state government. The division of powers among the executive, legislative and judicial branches is, in our opinion, wise and necessary. Although great changes in thought and conditions have taken place since the last constitutional convention, they do not make necessary new experiments in the machinery of law-making or lessen the value of representative government.

We find no necessity for any change in the Bill of Rights. To-day, as throughout our history as a state, it expresses the fundamental principles upon which rest the right of the citizen to the protection of his person and property. Study and reflection convince us that no alteration should be made either in substance or in form and therefore article I of the constitutions as proposed is identical with article I of the present constitution.

The remaining articles in the draft submitted propose in effect, one hundred and thirty-two changes of substances in the present constitution. A considerable number of important changes are suggested in the provisions set forth in the articles on The General Assembly, Legislation, The Executive, The Judiciary, Suffrage and Elections, and Taxations and Finance. The changes of substance in the other articles are so numerous that it has been necessary to re-arrange and re-write them. In the draft submitted all the provisions of article XII, Social Welfare, are new; and those of article XI, Education, are also new with the exception of the provisions of one section. Article XIII contains the scattered provisions of the present constitution in respect of municipalities, with several changes and with a number of new provisions of great importance.

Great care has been taken to express the provisions of the constitution as proposed in clear and simple English. Inaccurate language inevitably gives rise to doubt and litigation. It is of the greatest importance, therefore, that each section of the constitution should be so expressed as to put its meanings beyond the possibility of dispute. To this end, care has been exercised throughout the proposed constitution to use words and phrases uniformly. As a result, an idea is always expressed by the same word or phrase, and a word or phrase always expresses the same idea.

Pains have been taken to avoid the use of unnecessary words. The proposed constitution is shorter than the present constitution, although it contains many new provisions.

In a number of cases where the provisions of the present constitution have been adopted, "clarifying changes" have been made in order to resolve ambiguities. In such cases the meaning of existing provisions has been interpreted in the light of judicial decisions, or, in the absence of such decision, in accordance with what we judge to be the correct interpretation.

In Part II, in the notes to the constitution as proposed, will be found cross-references to the corresponding sections of the present and prior constitutions of the commonwealth. A concluding note gives the exact sense in which technical words, such as "officer," "commonwealth," and "state" are used.

In Exhibit A will be found, in parallel columns, the text of the constitution as proposed and the text of the corresponding provisions of the present constitution.

In Exhibit B will be found the text of the constitution as proposed, with a note to each section giving the text of the corresponding provisions of the present constitution and explaning the changes of substance and clarifying changes embodied in the new section.

Exhibit C contains the text of the present constitution with cross-references to the corresponding provisions of the constitution as proposed.

The published records of the commission include a full stenographic report of all meetings, the reports of committees and the memoranda and briefs submitted by the secretary containing information pertinent to the subjects considered. In order that all the information which has been gathered on constitutional amendment and revision may be accessible in convenient form, we have directed our secretary to prepare a synopsis of the material collected and of the suggestions made.

BRIEF STATEMENTS OF PRINCIPAL CHANGES RECOMMENDED.

A brief statement of the principal substantive changes recommended will suggest the extent to which we believe that it is necessary to revise the present constitution.

We have found occasion for substantive changes in the articles dealing with the organization of the state government.

Thus, in the article on The Judiciary, the draft submitted suggests a number of important changes:

The superior court is established as a constitutional court with jurisdiction as prescribed by law.

The several numbered courts of common pleas in the county of Philadelphia are combined in a single court thus conforming with the system which now prevails in the other counties.

The office of associate judge, not learned in the law, which now exists in many of the counties, is abolished.

A total change is made in the method of selecting and removing justices of the peace so that every county will be divided into districts, each district having a single justice who will be paid a salary only for judical services and will be subject to removal by the court of common pleas for cause shown.

In Philadelphia, the system of magistrates is abolished and there is submitted a system of justices of the peace learned in the law somewhat similar to that suggested for the other counties, subjects, however, to changes as prescribed by law.

The duty of regulating pleading and practice in courts of records is imposed upon the supreme court as the body best fitted to deal with these problems.

The provisions of the present constitution which forbids the imposition of non-judicial duties upon the justices of the supreme court is extended to the judges of all courts, excepting, however, the supervision of elections and certain powers of appointment which, it is submitted, may be properly entrusted to the judiciary.

In the article on the Executive it is recommended that the governor should appoint the secretary of internal affairs; that, so far as practicable, the governor should be forbidden to fill vacanies without the consent of the senate: and that the "civil service system" should be extended to employes of the state government.

Other and more numerous changes are suggested in the provisions dealing with the powers and duties of the state government.

Modern conceptions of efficiency in the conduct of government, and the necessity for the expenditure of large sums of money annually in the support of institutions for the care of the sick, the defective and the insane have led us to recommend the establishment of a complete budget system for the state government and of an entirely new method of appropriating money to charities.

We recommend the expansion of the powers of the state government so that it can pay pensions not only to military services but to any class of retired servants of the state government and to school teachers.

The increased necessity for the construction of public highways is recognized by a provision permitting the state government to borrow one hundred and fifty million dollars for that purpose.

The obligation to conserve and develop the natural resources of the state is recognized and its discharge is made possible by a provision permitting the state government to borrow twenty-five million dollars for forest purposes.

A debt created for either of these purposes must have the consent of two-thirds of each house of the general assembly and of the electors of the commonwealth voting on the question.

Provision is made for the amortization of such loans by the issue of serial bonds.

The restriction in the present constitution prohibiting the state government from doing its own printing and from providing supplies necessary for the capital buildings are removed, and the provisions affecting contracts for printing and supplies are revised.

The principal charges in the constitution as proposed affecting taxation are the recognition of the right of the state government, in levying an income or inheritance tax, to exempt incomes and estates below a minimum specified in the tax law, of the right to levy a special tax on anthracite coal, and of the right to appropriate money from the state treasury for the relief of persons, corporations or municipalities injured or damaged by surface subsidence resulting from past or future mining of anthracite coal. The first change is in accordance with modern thought and practice. The other two will, we hope, enable the state government to take care of an existing condition in the Lackawanna coal district which is at present beyond the ability of the municipalities concerned to deal with in a way fair to all the public and private interests affected.

In the article on Suffrage and Elections, we have inserted a provision expressly declaring the right to vote or to hold office shall not be denied on account of race, color or sex.

The tax qualification for voting is omitted.

The present constitution contains many wise provisions relating to corporations which it would be most unfortunate to alter, but it also contains certain prohibitions which experience has shown serve no public interest and hamper legitmate enterprise.

We have omitted the present restriction with respect to corporate ownership of real estate.

A change is suggested in the provisions with respect to issuing stock, so that it will be possible to issue new stock for less than par if the market value is below par.

The proposed constitution permits the investment by trustees in corporate bonds, provided such bonds are approved by an agency created by law.

In the article on public utilities, alterations and additions are suggested to meet the growing importance of the subject.

In the constitution as proposed, it is declared that all public utilities, and not merely railroads, canals and telegraphs, as in the present constitution, may be regulated by law or by an agency created by law, and the principles stated in the present constitution relating to the obligations of railroads, canal and telegraph corporations to the public and to each other have been amplified and extended to all utilities engaged in the transportation or transmission of passengers, freight or messages.

It is proposed to permit the consolidation of public service corporations, subject to proper regulation.

A provision is inserted permitting a common carrier to sell to others its surplus electricity for light, heat or power.

We recommend that neither the state government nor a municipality should be permitted to grant a right in waters for more than fifty years or without just compensation.

The improvement of the educational system of the commonwealth is a matter of immediate necessity. The suggested article on this subject requires the creation of a system of education no more than adequate, though far in advance of that which exists to-day. This system is to include free elementary, secondary and vocational educations for all children, free mental and vocational training for persons mentally or physically handicapped, free education in American citizenship for adults, schools for the training of teachers, public libraries and one or more universities. The system is to be administered by a state council of education appointed by the governor with a commissioner of education as its chief executive officer.

A permanent state school fund is provided.

There is a provision requiring the basic instruction in public and private schools to be given in the English language and from English text books.

As a people we have grown conscious to a degree in which we were not conscious fifty years ago of the obligation of the commonwealth to care for those who, on account of physical or mental infirmities, cannot care for themselves. The article on Social Welfare in the constitution as proposed declares that laws shall be enacted providing for the maintenance of an efficient system of institutions and agencies to care for residents of the commonwealth who cannot care for and support themselves on account of physical or mental infirmities or other misfortunes. It also provides that those sentenced to imprisonment shall be employed at useful labor and compensated for their employment. Finally, provision is made for subjecting charitable, correctional and penal institutions and agencies to governmental inspection and supervisory control and for vesting the power to enforce the law with respect to such institutions in one or more departments of the state government or in such agencies as may be prescribed by law.

The increase of urban population since the last constitutional convention and the growth of two great metropolitan districts of which Philadelphia and Pittsburgh are the centers, present many constitutional problems which did not exist in 1873. The article of Municipalities in the constitution as proposed therefore necessarily contains a large number of important changes of substance while many of its sections deal with subjects on which the present constitution is silent.

It is suggested that, on the basis of population, cities, counties and school districts should be divisable into seven classes and that other municipalities should be divisible into five classes.

A "home rule" section provides that laws may be enacted giving to cities of a particular class authority to frame, adopt and amend charters for their organization and government.

It is recommended that the boundaries of cities and boroughs should be changed only with the consent of the inhabitants of the territory affected.

To make "riper legislation" impossible, a section is suggested providing that appointive municipal officers must be appointed by an officer or agent of the municipality.

To meet problems peculiar to Philadelphia, it is proposed that, in a county coextensive with a city, county officers may be abolished and their duties may be imposed upon city officers. In order to eliminate the "mandamus evil," it is further suggested that in such counties the salaries and expenses of county officers and the expenses of local judges should be controlled by the municipal authorities.

The provisions of the present constitution with respect to the borrowing power of municipalities and the amortization of municipal loans are completely revised. We believe that the suggested provisions will enable municipalities to borrow sufficient money for all necessary public improvements without a constant resort to the process of constitutional amendment.

To facilitate further the erection of public improvements, it is suggested that it should be possible to enact laws providing for the assessment of benefits against property specially and particularly benefited by such improvements even though not actually abutting on the improvements.

It is also suggested that the state government and municipalities should be permitted to acquire, by right of eminent domain, more land than it is proposed to retain and to dispose of the surplus subject to appropriate restrictions.

Zoning regulations are declared to be within the scope of municipal powers.

To meet the needs of municipalities with mutual interest, it is recommended that two or more municipalities should be permitted to contract for the joint conduct of public enterprises.

In the article on amendment and revision, a new section is suggested providing for a method of erecting constitutional conventions to frame new constitutions or to suggest amendments or revisions.

CONSTITUTIONAL CONVENTION RECOMMENDED.

If a considerable number of changes of substances are, as we believe necessary to make the constitution of the commonwealth conform to modern thought and conditions, it is evident that the present constitution should be revised—not burdened with a large number of additional amendments.

The constitution as proposed is, in effect, a revision of the present constitution.

There are two methods of changing the constitution: one, by constitutional convention; the other, by the adoption of amendments in the manner perscribed by article XVIII of the present constitution.

The commonwealth has had four constitutions,—those of 1776, 1790, 1838 and 1874. Each of these constitutions was drafted by a constitutional convention, the members of which were elected by the people.

The method of amendment provided in article XVIII of the present constitution is first found in the constitution of 1838. It was inserted not as a substitute for the constitutional convention, but to provide a means by which the provisions of some one section could be amended without the necessity of calling a convention to propose the amendment. This being the manifest purpose of article XVIII, there is grave doubt whether the machinery of amendment provided for in that article can be used to adopt under the form of one or more amendments, what is in effect a general revision of the constitution.

We believe in representative government as a fundamental American institution. It is one of the essentials of representative government that the whole people, through their representatives duly elected by them for that special purpose, shall have the right to frame their fundamental law. A constitutional convention composed of duly elected representatives is the only practicable way in which the citizens of a great commonwealth can frame a constitution. It is in violation of all American constitutional traditions to ask the people to pass directly on a general revision of their fundamental law unless, acting through their representatives, they have framed its provisions.

We therefore recommend the enactment of laws necessary to provide for

(1) The submission to the people of the question of calling a constitutional convention.

(2) The election of delegates to the convention.

(3) The reference to the convention of the constitution here proposed.

(4) The submission to the people of the proposals of the convention.

On the question,

Will the commission agree to the report?

MR. REED. Mr. Chairman. Is it in order to move to amend it, sir?

The CHAIRMAN. Yes, sir.

Mr. REED. Mr. Chairman: I move to amend the last paragraph so it will read:

"We believe in representative government as a fundamental American institution. It is one of the essentials of representative government that the whole people, through representatives duly elected in a manner authorized by the people, shall have the right to frame their fundamental law. A constitutional convention, composed of duly selected representatives is the only practical way in which the citizens of a great commonwealth can frame a constitution. It is also one of the essentials that the revision of the fundamental law so made by a representative convention, constituted in accordance with the wish of the citizens, should be submitted to the people for their approval or disapproval.

"We, therefore, recommend the enactment of laws necessary to provide for:

"(1) The submission to the people of the question of calling a constitutional convention, and the method of selection of the members of the proposed convention.

"(2) The reference to the convention of the constitution here proposed.

"(3) The submission to the people of the proposals of the convention."

Mr. McCORMICK. Mr. Chairman: I second the amendment.

The amendment was agreed to.

On the question,

Will the commission agree to the report as amended?

Mr. PINCHOT. Mr. Chairman: Is this the final vote which will close the business of the commission.

The CHAIRMAN. Yes, sir.

Mr. PINCHOT. Mr. Chairman: I would like to say just one word, if I may. I only want to say I shall vote with a majority of the members of the commission to approve the report to be submitted to the legislature, but I want in making that vote to ask that the fact be noted that if this were the final report to go before the people I should vote against it. I should do so in spite of my recognition of the value of the work of this commission, because of the great importance which I believe the question of taxation has, and because this draft as prepared by the commission contains the refusal to the people of the state of Pennsylvania of the right to impose progressive or graded taxes, which right is not refused to the people of the whole United States by the constitution of the United States. This right seems to me to be of such importance as being in the interest of the great majority of the people, and the refusal of it being against the interest of the minority who are rich, that I would be constrained to vote in that way. I desire, therefore, to make this note and to express my belief that no constitution which refuses to the people of Pennsylvania the right already given to the people of the whole United States either would be or ought to be approved by the people of the state.

Mr. THORPE. Mr. Chairman: Does that preclude any further amendment?

The CHAIRMAN. Oh, no, sir. It will continue the debate. I am ready to hear any amendment that any one may wish to offer.

Mr. THORPE. Then I might make an amendment before you put this question?

The CHAIRMAN. Yes, sir.

Mr. THORPE. I suggest as to the form of this report, if you please, whether it would not be more persuasive if the report were so printed that the reader of it could understand and get the gist of it by looking at it, and whether the learned secretary who has made an admirable report might not improve its form by making headings of the important matters, so that the legislature or whoever looks

at it could tell at a glance just what it means. I suggest, therefore, Mr. Chairman, that that be done.

The CHAIRMAN. And make it as a motion.

Mr. THORPE. Yes, sir; that the report be amended in form by directing the secretary to prepare proper headings for the different subjects treated of in the report.

Mr. McCORMICK. Mr. Chairman: I second the motion.

The motion was agreed to.

On the question recurring,

Will the commission agree to the report as amended?

Mr. PEPPER. Mr. Chairman: I move its adoption.

Mr. ALTER. Mr. Chairman: I second the motion.

The motion was agreed to.

RESOLUTIONS.

Mr. FISHER. Mr. Chairman: I offer and move the adoption of the following resolution:

The resolution was read by the secretary as follows:

Resolved, (1) That the secretary is directed to prepare, under the direction of the chairman, and to submit to the chairman prior to the adjournment of the pending session of the legislature, a brief on the constitution as proposed, which shall contain:

(a) A synopsis of the material bearing on constitutional revision collected by this commission and of the suggestions for constitutional amendment and revision made to the commission;

(b) A history of the commission's proceedings with respect to each section;

(c) A statement of the origin and history of each section taken from the present or from prior constitutions;

(d) Such other matters as the chairman shall deem useful to the general assembly.

(2) That the secretary shall cause the commission's records to be properly indexed, and shall do such other work in connection with the commission's papers and correspondence as may be directed by the chairman.

(3) That, to enable the secretary to perform the duties herein imposed, he may secure such clerical and other assistance as may be approved by the chairman.

Mr. VOLL. Mr. Chairman: I second the motion.

The motion was agreed to.

Mr. FISHER. Mr. Chairman: I offer and move the adoption of the following resolution:

The secretary read the resolution as follows:

Resolved, That, should the chairman regard another meeting of this commission as desirable, he may call such meeting at any time prior to the adjournment of the pending session of the general assembly.

Mr. VOLL. Mr. Chairman: I second the motion.

The motion was agreed to.

PRESENTATION TO CHAIRMAN.

Mr. PEPPER. Mr. Chairman: As this is likely to be the final session of the commission, I wish to have the pleasure of discharging a duty which has been imposed upon me by the members of the commission; the pleasurable duty it is of expressing the feeling which all of us entertain toward the chairman.

Last evening, sir, you moved us greatly by your expression of regard for us and by your commendation of our work. If the expression was merited, it was, in our judgment, due in large measure, sir, to the spirit and ability with which you have guided our deliberations.

We have been in session here an entire year, and from the first day you have shown yourself able in a remarkable fashion to combine thoroughness and dispatch, discipline and exquisite courtesy, wisdom and rare good humor. Many of us knew you before the work of our commission began, others of us have come to know you only as our work progressed, but all of us to-day admire you more than ever before; and when yesterday you were elevated to the supreme bench of the commonwealth every member of this commission was sensible of a thrill of personal pride.

We have taken such action, sir, as will result in a few days in the tendering to you of a visible token of our regard; but, in the meantime, and in this informal way, on behalf of the members of the commission, I wish to pledge to you the lasting friendship and deep affection of every member of this body.

The CHAIRMAN. Ladies and gentlemen of the commission: I think all that I can say is that I reciprocate everything that has been said.

ADJOURNMENT.

The CHAIRMAN. If there is no further business to come before the commission, the commission will, on motion, now adjourn in pursuance of the resolution that has been offered, subject to the call of the chairman if it is deemed advisable that we shall be again called together.

Mr. THORPE. Mr. Chairman: I move that the commission do now adjourn.

Mr. REED. Mr. Chairman: I second the motion.

The motion was agreed to.

Whereupon, at 3.20 o'clock P. M., the commission adjourned sine die or to meet at the call of the chair if deemed advisable.

MEMORANDA AND BRIEFS

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MEMORANDA AND BRIEFS NO. 29.

CONSTITUTIONS—METHOD OF CHANGING.

Harrisburg, Pa., April 6, 1920.

Hon. William I. Schaffer,

Chairman.

Dear Sir:—On February 11, 1920, the committee of the whole adopted a resolution directing the secretary to submit to the commission a brief of the methods by which constitutions have been submitted in the past so that the commission, and the public generally, may know what the American precedents are. I have also received from individual commissioners requests for information as to methods of constitutional revision recently adopted in other states, and also inquiries as to the constitutionality of different lines of action which the commission might recommend the general assembly to take in reference to the changes recommended by the commission. As all these questions are related I have embodied such replies as I am able to make in this brief on

METHOD OF CHANGING STATE CONSTITUTIONS.

I shall discuss the subject under the following heads:

I.

Methods used to formulate and adopt the several constitutions of Pennsylvania.

II.

Recent methods used is revising or proposing revisions in the constitutions of other states.

The different constitutional lines of action which the commission may recommend the general assembly to take in reference to the constitutional changes recommended by the commission.

Under this heading I shall endeavor to answer the following questions:

1. *Has the legislature the power to pass a law providing for a convention to be elected by the people, without submitting to the people the question of whether or not there shall be a convention?*
2. *Can the question as to whether the convention shall or shall not be called be placed before the electorate at the same time at which delegates to the convention are elected?*
3. *Can the general assembly provide that the convention may adopt and promulgate a new constitution or an amendment to the present constitution or must the changes made by the convention be submitted to the electorate of the state.*

4. *Can the general assembly formulate an amendment or a new constitution in the form of an amendment and place the same before the people, in any other manner than that prescribed in article XVIII?*
5. *If the commission recommend a new constitution will the general assemblies of 1921 and 1923 have the right to place such new constitution before the electorate in the fall of 1923 as an amendment to the present constitution?*

IV.

The possible forms in which the constitutional changes recommended by the commission may be embodied.

V.

The time which must elapse before a new constitution or amendments to the present constitution can be adopted.

PART I.

METHODS USED TO FORMULATE AND ADOPT THE SEVERAL CONSTITUTIONS OF PENNSYLVANIA.

Four constitutions have been adopted in Pennsylvania which are generally known by the dates of their adoption, namely 1776, 1790, 1838 and 1873.

(1) The Constitution of 1776.

On June 18, 1776, there met at Philadelphia a conference of representatives from the county committees of several of the counties of the province. The conference was called by the Committee of Philadelphia in response to the opinion of those who were dissatisfied with the existing provincial government and desired a new government to support the Constitutional Congress and independence from Great Britain. The conference provided by resolution for the election by the people of delegates to a convention "for the express purpose of forming a new government." In order to insure the election of delegates of the popular party the conference extended the suffrage to every associator of 21 years of age who had lived one year in the province and had paid or been assessed taxes, and restricted it by requiring every person qualified to vote for representatives (that is those previously entitled to vote) to take an oath renouncing allegiance to Great Britain and agreeing not to oppose independence. (Conventions of Pennsylvania, 1776 page 35-39. Jameson, Constitutional Conventions, par. 143-4. Ford, Pennsylvania's First Constitution, Pol. Science Quarterly Vol. X. 1895, page 425, 448).

The convention elected pursuant to the resolution of the Philadelphia Conference drafted and proclaimed the constitution of 1776. (Conventions of Pennsylvania, 1776, page 54.) The preamble declares that the representatives of the people proclaimed it the constitution "by virtue of the authority vested in us by our constituents." It also states that it is to "remain in force*** forever unaltered, except in such articles as shall hereafter, on experience, be found to require improvement and which shall by the same authority of the

people, fairly delegated, *as this frame of government directs,* be amended or improved." The manner directed by the instrument for amendment is found in section 47 which provides for a "council of censors," which might call a convention of delegates to be elected by the people, to amend the constitution whenever two-thirds of its number deemed it necessary.

(2) The Constitution of 1790.

The council of censors provided in the prior constitution never called a convention. (Jameson, Constitutional Conventions, par. 222). The general assembly, however, on March 24, 1789, resolved to obtain the sense of their constituents as to the need of doing so. At the next session of the assembly that body being satisfied from the reports of its members who had mixed with their constituents and from "numerous and respectable" petitions submitted to it that the people desired a convention, provided by resolution on September 15, 1789, for the election of delegates to a convention. The delegates were to be equal in number to and to have same qualifications as representatives to the assembly and to be chosen by the same persons. The convention met and framed a new constitution and in accordance with the resolution of the assembly published its alterations and adjourned for several months to obtain the sense of their constituents and upon reassembling the conventions proclaimed the new instrument to be the constitution of the commonwealth. (Conventions of Pennsylvania, 1790, pages 129, 133, 242, 247; 3 Smith's Laws XXXV.)

In 1825 the general assembly submitted to the electors the question whether or not there should be a constitutional convention (Act of March 28, 1825, P. L. 129). The question was answered in the negative by a large majority. (H. M. Jenkins, Penna. Colonial and Federal Vol. II, page 237.)

(3) The Constitution of 1838.

The constitution of 1790 contained no provision for amendments. The general assembly, however, by the Act of April 14, 1835, P. L. 270, provided for an election to ascertian "the sense of the citizens of this commonwealth, on the expediency of calling a convention of delegates to be elected by the people, with authority to submit amendments of the state constitution to a vote of the people." The vote being in favor of a convention, the general assembly by the Act of March 29, 1836, (I Debates of Convention of 1837, page iv) provided for an election of delegates. The convention which was to consist of the same number of members as the general assembly and apportioned in the same manner was given power to submit "amendments to the constitution" to a vote of the people, and for this purpose to issue a writ for an election to be held in accordance with the laws relating to general elections.

The changes recommended by the convention were submitted to the electorate as an amended constitution for which but one vote was to be cast and was ratified in October, 1838, by vote of 113,971 to 112,759. (Debates Convention of 1837, Vol. 13, pages 230, 260; Smull's Legislative Handbook 1915, page 305).

This constitution contained a provision (Article X) for its amendment substantially similar to that contained in the present constitu-

tion, namely that proposed amendments after having been passed at two sessions of the general assembly should be submitted to the people at an election. In accordance with Article X, amendments were adopted in 1850, 1857, 1864 and 1872. (Buckalew Constitution of Pennsylvania, page xi).

(4) The Constitution of 1873.

The procedure followed was similar to that by which the constitution of 1838 was adopted. The general assembly by the Act of June 2, 1871, P. L. 282, provided "That the question of calling a Convention to Amend the Constitution of this Commonwealth be submitted to a vote of the people," at a general election. The election was "For a Convention" or "Against a Convention." The vote being in the affirmative the general assembly by the Act of April 11, 1872, P. L. 53, provided for an election of delegates and fixed the powers of the convention. According to this act the convention was to consist of 133 members of which 28 were to be elected in the state at large. Each elector was to vote for not more than 14 of these 28. Three additional delegates were to be elected from each senatorial district, but an elector was to vote for not more than two of the district candidates except in the counties of Philadelphia, Allegheny and three others where a large number were to be elected (Section 1.) The convention so elected had power to propose a new constitution or amendments to the existing one. It was provided that one-third of all the members of the convention should have the right to require the separate submission to popular vote of any change proposed. The convention was not authorizeed to change the "declaration of rights" or "to submit any proposition for the establishment of a court with exclusive equity jurisdiction" (Section 4). The election for ratification or rejection was to be conducted as a general election (Section 6).

As with the constitutions of 1790 and 1838 the draft prepared by the convention of 1873 contained a schedule for carrying the new instrument into effect. In addition the convention enacted an ordinance "for submitting the amended constitution to a vote of the qualified electors." This ordinance fixed the date of the election and provided for the manner of conducting it, in accordance with the Act of 1872 except that for the county of Philadelphia it was provided that the election should be conducted by a committee selected by the convention.

In Wells vs. Bain, 75 Pa. 39, the supreme court held that the powers of the convention were limited by the act of 1872 and that as the provisions of the ordinance relating to Philadelphia were in excess of the power given in the act those provisions were void and an injunction was granted restraining the members of the committee from acting. It was also charged that one-third of the members of the convention had required the separate submission of Article V relating to the judiciary, but the court held that it was not competent to inquire into that matter.

In this connection it may also be noticed that contrary to the provisions of the Act of 1872, the convention did change the bill of rights. Its authority to do so was attacked in Wood's Appeal, 75 Pa. 59, but was upheld by the lower court. The opinion of the supreme court

indicates that it would have taken a different view but the constitution having been ratified prior to its decision the decree was affirmed and the changes have never since been questioned.

The constitution was adopted by the electorate on December 16, 1873, by a vote of 253,744 to 168, 594, and proclaimed by the governor on Jan. 7, 1874 (Buckalew, Constitution of Pennsylvania, page 320). All amendments to the present constitution have been made in accordance with Article XVIII relating to amendments.

The general assembly by the Act of May 14, 1874, P. L. 157, provided for a commission of seven persons to be appointed by the governor, to prepare and submit to the next session of the legislature any amendments to the constitution that they thought necessary. The general assembly, however, proposed no amendments to the constitution either at the session of 1875 nor at that of 1876.

(5) Attempt to Revise Constitution in 1891.

To complete the record of constitutional revision in Pennsylvania reference must be made to the vote of the electorate in 1891. The general assembly by the Act of June 19, 1891, P. L. 345, provided that at the general election in November, 1891, the electorate should vote for or against a constitutional convention and at the same time elect delegates whose election should only be effective in the event of the vote being for a convention. The election resulted in a rejection of the proposal by a vote of 173,813 for the convention and 420,598 against it. (Smull's Legislative Handbook for 1893, page 481).

(6) Summary.

The foreign paragraphs may be briefly summarized. All four constitutions were drafted by conventions of delegates chosen by the electors. The first two, namely 1776 and 1790 were promulgated and adopted by the conventions; the last two, 1838 and 1874 were submitted to the electorate. The method followed in the case of 1838 and 1874 was first an act of the general assembly providing for a vote of the people for or against a convention and then (and this applies equally to the constitution of 1790), an act of the general assembly providing for a convention. All other changes of a constitutional nature have been made under the constitutions of 1838 and 1874 in the manner provided for in those instruments which include proposal by two successive general assemblies and ratification by the electorate.

PART II.

Recent Methods Used in Revising or Proposing Revisions to the Constitutions of Other States.

In dealing with this subject I shall confine myself to the period from January 1, 1911, to December 31, 1919.

1. ARIZONA. In 1911 a convention composed of delegates elected pursuant to an act of congress submitted to the electors a constitution which was ratified as a whole on February 9th by a vote of 12,187 for and 3,822 against (Kettleborough, State Constitutions, note to constitution of Arizona.)

2. ARKANSAS. In 1917 the legislature without first submitting the question to the electorate provided for a convention and the election of delegates thereto. The convention met and submitted in December, 1918 a new constitution which was rejected by a vote of 23,820 for and 37,184 against.

3. CALIFORNIA. In 1914 a legislative proposal for a convention was rejected by a vote of 180,111 for and 442,687 against.

   The legislature in 1919 proposed an amendment to Article XVIII, section 2, of the constitution relating to calling conventions, and provided that the adoption by the electors of that amendment should be deemed an instruction to the legislature at its next session to call a convention. The election is to be held in 1920.

4. COLORADO. In 1916 a legislative proposal for a convention was defeated by a vote of 53,530 for and 69,579 against.

5. IDAHO. A legislative proposal was submitted to the electors in November, 1918, and defeated by a vote of 16,442 for and 36,351 against.

6. ILLINOIS. A legislative proposal for a convention was adopted by the electorate on November 5, 1918, by a vote of 562,012 for and 162,202 against. The convention is now in session and has not yet (March 5, 1920) agreed upon any recommendations. (Telegram from the Secretary of State of Illinois, March 5, 1920).

7. INDIANA. The legislature in 1911 passed an act providing for an entirely new instrument which was to be the state constitution when ratified by the electorate. The supreme court of the state, however, in the case of Ellingham vs. Dye, 178 Ind. 336 (1912) held that the act was void because if it was to amend the existing constitution it did not comply with the provision for amendment contained therein, and if it was for a new constitution it was in excess of the powers of the legislature. In 1913 the legislature provided for submitting to the electors a proposal for a convention. At the election in 1914 the proposal was rejected by a vote of 235,140 to 338,947. Without again submitting the preliminary question to the electors, the legislature in 1917 passed an act for the election of delgates to a convention. The validity of this act was brought before the Supreme Court prior to the date of election and declared void because the legislature had no authority to call a convention without obtaining the consent of the electors. (Bennett vs. Jackson 186 Ind. 533).

8. LOUISIANA. In 1913 there was submitted to the electorate a legislative proposal for a convention which was to have power only to provide for funding the state debt and to adopt such amendments as it should deem necessary for that purpose. The proposal was adopted, the convention met, and adopted the contemplated amendment to the constitu-

tion. Two years later the legislature submitted a proposal for a general constitutiontl convention which was rejected by a vote of 29,711 for and 35,796 against.

9. MASSACHUSETTS. A legislative proposal for a convention was adopted in 1916 by a vote of 217,293 for and 120,979 against. Delegates were elected and the convention at the end of its first session submitted three amendments as follows:

1. Prohibiting the use of public funds for support of sectarian institutions. Adopted 206,329 to 130,357.

2. Authorizing the legislature to provide for supplying necessaries by state, cities and towns in time of war and emergency. Adopted 261,119 to 51,826.

3. To authorize the legislature to provide for absentee voting. Adopted 231,905 to 76,709.

The following year the same convention submitted 19 further amendments, each voted on separately and adopted as follows:

1. Initative and referendum. Adopted 170, 646 to 162,103.

2. Conservation of natural resources. Adopted 172,-111 to 102,768.

3. Regulation of advertising in public places. Adopted 193,925 to 84,127.

4. Preservation of historical property. Adopted 183,-265 to 81,933.

5. Adjournments of general court. Adopted 147,104 to 100,552.

6. Appointment and removal of naval and military officers. Adopted 155,649 to 91,686.

7. Powers of governor as commander-in-chief. Adopted 155,114 to 84,822.

8. Filling vacancies in the office of governor and lieutenant governor. Adopted 172,125 to 78,245.

9. Return of bills by governor with recommendations for amendment. Adopted 164,499 to 76,972.

10. Women eligible for notaries public. Adopted 153,-315 to 105,591.

11. Retirement of Judicial officers. Adopted 156,796 to 86,023.

12. Granting of charters of incorporation made revocable and subject to amendment. Adopted 161,833 to 79,787.

13. General court may establish building zones in cities. Adopted 161,214 to 83,095.

14. Compulsory voting. Adopted 134,138 to 128,403.

15. Prohibiting the lending of public money to private corporations. Adopted 153,972 to 90,233.

16. Budget system. Adopted 155,738 to 81,302.

17. Biennial elections for state officers, senators and representatives. Adopted 142,868 to 108,588.

18. Appointment of members of the general court to office and service upon recess committees. Adopted 152,-800 to 87,009.

19. Reorganizing the executive and administrative work of the state. Adopted 158,394 to 81,586.

On November 4, 1919, there was submitted by the convention to the electors a new text of the constitution, which consisted of a rearrangement of the previous instrument with its amendments. It was adopted as a whole by a vote of 263,359 to 64,978.

10. NEBRASKA. A legislative proposal for a convention was adopted by the electorate in 1918 by a vote of 121,830 for and 44,491 against. Delegates have been elected and at the present time (March 5, 1920) the convention is still in session.

11. NEW HAMPSHIRE. In 1911 the electorate adopted a legislative proposal for a convention, delegates were elected and in 1912 submitted 12 amendments each of which was voted on separately. The constitution required a two-thirds majority for adoption. Four of the amendments only were adopted. The vote on each was as follows:

1. Increasing the senate and dividing state into senatorial districts. Defeated 19,443 for; 13,931 against.

2. Regarding ratio of inhabitants to state representatives. Defeated 21,399 for; 10,952 against.

3. Special taxation of wood, money, income from foreign corporation, etc. Defeated 25,108 for; 12,636 against.

4. Graded inheritance taxes. Defeated 18,432 for; 9,699 against.

5. Tax on incomes of public service corporations and voluntary associations. Defeated 19,200 for; 10,151 against.

6. Amending the bill of rights by striking out "right grounded on evangelical principles" and "Protestant." Defeated, 16,555 for; 14,315 against.

7. No person to vote who shall have been convicted of treason, bribery, or wilful violation of election laws; giving the right to the supreme court to restore such privileges. Adopted 22,383 for; 8,322 against.

8. Governor, councillors and senators to be elected by a plurality instead of a majority. Adopted 21,120 for; 9,801 against.

9. Amending the bill of rights by striking out the provision that pensions shall not be granted for more than one year at a time. Defeated, 16,708 for; 11,440 against.

10. Empowering the legislature to give police courts jurisdiction to try and determine, subject to appeal and trial by jury, criminal causes wherein the punishment is less than imprisonment in the state prison. Adopted 18,608 for; 8,291 against.

11. Requiring that the legislature in dividing the state into councilor districts shall be governed by the population. Adopted 19,196 for; 6,901 against.

12. Giving the governor authority to approve or disapprove any separate appropriation contained in any bill or resolution. Defeated 17,942 for; 9,325 against.

In 1916 another legislative proposal for a convention was adopted by a vote of 21,589 for and 14,525 against. The convention has met and formulated seven separate amendments which will be submitted to the electors at the November, 1920, election (Telegram from Secretary of State of New Hampshire, March 5, 1920.)

12. NEW MEXICO. The constitution framed by the convention of delegates elected pursuant to an act of Congress was submitted as a whole to the electors of the territory in 1911 and adopted by a vote of 31,742 for and 13,399 against. (Kettleborough, note to Constitution of New Mexico).

13. NEW YORK. A legislative proposal for a convention was adopted in 1914 by a vote of 153,322 for and 151,969 against. The following year the convention submitted its recommendations in three questions. All were rejected. The vote on each question was as follows:

1. Shall all of the revised constitution submitted by the constitutional convention not included in questions 2 and 3 be approved. For 400,423; against 910,462.

2. Shall the proposed amendments submitted by the constitutional convention to sections 2, 3, 4 and 5 of Article III relating to legislative apportionment be approved? For 371,588; against 891,337.

3. Shall the new Article X submitted by the constitutional convention relating to taxation be approved? For 346,922; against 924,571.

The next year, 1916, the legislature submitted another proposal for a convention which was rejected by a vote of 506,563 for and 658,269 against.

14. NORTH CAROLINA. A legislative proposal for a convention was rejected by the electorate in 1918.

15. OHIO. The electorate in 1910 adopted a legislative proposal for a convention. A convention met and submitted 41 amendments, each of which were voted on separately. Thirty-three were adopted; eight were rejected. The vote on each was as follows:

1. For verdict by three-fourths of the jury in civil cases. Adopted 345,686 to 203,953.

2. Abolishing the death penalty. Defeated 258,706 to 303,246.

3. For taking depositions and allowing counsel and the court to comment on, and the jury to consider, the fact that the accused did not testify. Adopted 291,717 to 227,547.

4. The state may be sued as provided by law. Adopted 306,764 to 216,634.

5. The amount recoverable for death in negligence cases shall not be limited by law. Adopted 355,605 to 195,216.

6. Initiative and referendum. Adopted 312,692 to 231,312.

7. To authorize the legislature to enforce attendance of witnesses. Adopted 348,779 to 175,337.

8. Passing bills over governor's veto by a three-fifths vote instead of a two-thirds vote. Adopted 282,412 to 254,186.

9. For mechanic's liens. Adopted 278,582 to 242,385.

10. Laws may be passed limiting the hours of labor. Adopted 353,588 to 189,728.

11. Compulsory state insurance for workmen. Adopted 321,558 to 211,772.

12. Forestry and preservation of natural resources. Adopted 318,192 to 191,893.

13. Eight hour day and 48 hour week in public work. Adopted 333,307 to 232,898.

14. Removal of public officers. Adopted 347,333 to 185,981.

15. Laws may be passed regulating expert testimony, in criminal cases. Adopted 336,987 to 185,408.

16. Legislature may provide for registering land titles. Adopted 346,373 to 171,807.

17. Prohibiting contract labor and requiring prison made goods to be marked "prison made," Adopted 333,-034 to 215,208.

18. Limiting a special session of the legislature to the subject of the call. Adopted 319,100 to 192,130.

19. Creating courts of appeals; increasing the number of supreme court judges from 6 to 7; creating the office of chief justice to be elected by the people; providing for "one trial and one review" except in chancery cases. Adopted 264,922 to 244,375.

20. Abolishing the common pleas and giving each county at least one resident judge. Adopted 301,891 to 223,287.

21. Eliminating jurisdiction of justices of the peace in townships having municipal courts. Adopted 264,832 to 252,936. (Adoption of other judical changes makes this last amendment of no effect.)

22. No injunctions shall be issued in labor disputes except to protect life and property; and contempt cases to be tried by a jury. Defeated 240,896 to 257,302.

23. Woman suffrage. Defeated 249,420 to 336,875.

24. Making negro suffrage constitutional. Defeated 242,735 to 265,693.

25. Voting machines. Defeated 242,342 to 288,652.

26. Direct primaries and election of United States Senators by direct vote of people. Adopted 349,801 to 183 112.

27. New school system. Adopted 298,460 to 213,337.

28. Creating the office of superintendent of public instruction. Adopted 256,615 to 251,946.

29. Permitting legislature to issue bonds for roads. Defeated 272,564 to 274,582.

30. Public buildings may be insured in mutual insurance companies. Adopted 321,388 to 196,628.

31. Abolishing the board of public works and providing for a superintendent appointed by the governor. Adopted 296,635 to 214,829.

32. Continuing the present system of uniform rule in taxation; restoring future issues of bonds to taxation; and taxing incomes and inheritances. Adopted 269,239 to 249,864.

33. Regulation of corporations and the sale of stocks and bonds. Adopted 300,466 to 212,704.

34. Stockholders of banks to be liable to double the amount of the par value of their stock, plus the amount invested therein. Adopted 377,276 to 156,688.

35. State to do its own printing or to let it to the lowest bidder. Adopted 319,622 to 192,378.

36. Women may be appointed to situations involving the interests and care of women and children. Defeated 261,806 to 284,370.

37. Compulsory civil service in State, city and county. Adopted 306,767 to 204,580.

38. The legislature may regulate the use of billboards. Defeated 261,361 to 262,440.

39. Majority voting on constitutional amendments shall be sufficient to carry the same. Adopted 271,827 to 246,687.

40. Home rule for municipalities. Adopted 301,861 to 215,120.

41. The establishment of a license system for the sale of liquor. Adopted 272,361 to 188,828.

16. SOUTH DAKOTA. A legislative proposal for a convention was rejected by the electors by a vote of 34,832 to 51,585 in 1914.

17. TENNESSEE. Three legislative proposals for conventions have been rejected by the electors, the first in 1916 by a vote of 43,940 for and 67,336 against; the second in 1917; the third in 1920 by a vote of 8,093 for and 41,426 against. (Telegram from Secretary of State, March 12, 1920.)

18. TEXAS. A legislative proposal for a convention was submitted in November, 1919, and rejected by a vote of 23,549 to 71,376.

19. VERMONT. A commission has been appointed by the governor to submit proposals for amendments to the legislature in 1921.

20. WASHINGTON. A legislative proposal for a convention was rejected by a vote of 55,148 for and 58,713 against, in 1918. (The foregoing information, except where otherwise stated, was obtained from the American Year Book (D. Appleton & Co.), for 1911-18, and from information furnished by the editor for the year 1919.)

PART III.

The Different Constitutional Lines of Action which the Commission May Recommend the General Assembly to Take in Reference to the Constitutional Changes Recommended by the Commission.

Article XVIII of the present constitution expressly provides a method of amendment. An amendment adopted by two successive legislatures and subsequently by a majority of the electors of the state voting thereon becomes part of the constitution. Whether a complete revision of the entire constitution can be adopted as a single amendment or a series of amendments under this article is a question which I shall discuss later.

The present constitution, like its predecessors, makes no express provision for calling a convention to revise the constitution or for any other method of changing the constitution except that set forth in Article XVIII. But the second section of the Declaration of Rights (Article I) provides:

> "All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness. For the advancement of these ends they have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may think proper."

This is not an invitation to those dissatisfied with the existing fundamental law to foment revolution, nor is it an empty declaration of rights which there are no constitutional means of enforcing. The power to change the form of government does exist in the people taken as a whole. But if they would act in a constitutional and not a revolutionary manner then they must exercise that power by means of a law.

At the present time a constitution and a government formed under it does exist. The law making power has by the people been vested in the general assembly. That body is the only law making body now existing. Its powers are limited. Existing under and by virtue of the constitution it cannot make a law contrary to the constitution. Apart from this restriction, however, the people have vested in the general assembly all their law making power. It follows, therefore, that the general assembly, and only the general assembly, may provide by law a method by which the people as a whole may constitutionally exercise their power to formulate and adopt a new constitution or make any lesser change therein in a manner other than that prescribed in Article XVIII.

In Wells v. Bain (75 Pa. 39, 49) the late Chief Justice Agnew in a most carefully reasoned judicial opinion on methods of changing state constitutions, says:

> "It follows, therefore, that in a state of peace a law is the only means by which the will of the people can be collected in an authorized form, and the powers of the people can be delegated to the agents who compose the convention. The form of the law is immaterial in this question of derivative authority. It may be a law to confer general authority or one to confer special authority. It may be an invitation in the first place,

as was the Act of 1789, under which the convention of 1790 was convened, and an authority to the people to meet in primary assemblies to select delegates and confer on them unrestricted powers; or it may be a law to take the sense of the people on the question of calling a convention, and then a law to make the call and confer the powers the people intend to confer upon their agents. The power to pass the law carries with it of necessity that to frame and declare the terms of the law."

It was under this power that the convention which framed the constitution of Pennsylvania of 1790, 1838, 1874, met. None of our constitutions have contained provisions for revisions by conventions, except that of 1776 which provided for a convention to be called by a "council of censors." This method, however, as we have seen was not the one followed in obtaining the constitution of 1790. Neither does Article XVIII of the existing constitution impliedly prevent a change through the machinery of a constitutional convention. The constitution of 1838 had a provision for amendment similar to that in the present constitution, yet the right of the general assembly to provide for the election of a constitutional convention was not attacked in 1872 when the Act to elect members of the convention which drafted our present constitution was passed.

The precedents in Pennsylvania that the general assembly may provide by law for a constitutional convention without any express constitutional authority is in accord with the well established precedents in other states.

Jameson (Constitutional Conventions, page 210) who wrote in 1887 gives a list of 16 states in which 27 conventions were held under acts of legislatures, though the existing constitutions contained no provisions therefor, to which list may be added Mississippi in 1890, Louisiana in 1898, and Connecticut in 1902. (Dodd Revision of State Constitutions page 44). The sole exception to the rule that the legislature has such a right is found in the Opinion of the Justices in Rhode Island (14 R. I. 649, 1883) in which they held that a convention could not be called in that state because the constitution made no provision therefor. (Hoar, Constitutional Conventions, page 14).

It follows that although there is no express provision in the constitution of Pennsylvania authorizing the general assembly to provide for a convention of delegates to be elected by the people to revise the constitution or, draft a new constitution, that both constitutional theory and precedents here and in other states maintain the proposition that:

The general assembly may by law provide for the election by the people of the members of a constitutional convention vested with the power to formulate a new constitution or any lesser constitutional change.

In the carrying out the convention method of changing the constitution, certain questions arise which I shall proceed to state and endeavor to answer.

Question I.

Has the Legislature the Power to Pass a Law Providing for a Convention to be Elected by the People, Without Submitting to the People the Question of Whether or Not there Shall be a Convention?

In this state the general assembly prior to providing for the election of delegates to the convention that framed the constitution of 1790, obtained the wishes of the electorate by means of the members mixing with their constituents and receiving petitions from them.

In 1825 the General Assembly submitted the question of having a convention to the people (Act of March 28, 1825 P. L. 129), and the question was likewise submitted prior to providing for the conventions that framed the constitutions of 1838 and 1873. In 1891 the question was again submitted and its rejection rendered null in election of delegates chosen at the same time.

Turning from Pennsylvania practice to the opinion of a Pennsylvania judge, we find Chief Justice Agnew in the part of his opinion in Wells v. Bain, which I have already quoted, saying:

"* * * the powers of the people can be delegated to the agents who compose the convention. The form of the law is immaterial. * * * It may be an invitation in the first place as was the Act of 1789 under which the convention of 1790 was convened, and an authority to the people to meet in primary assemblies to select delegates * * *; or it may be a law to take the sense of the people on the question of calling a convention. * * * The power to pass the law carries with it of necessity that to frame and declare the terms of the law." Here we have not, indeed, a decision, but an expression in a most carefully prepared opinion by an authority of weight that the general assembly has the power to provide for the election of delegates to a constitutional convention without first submitting the question whether there shall or shall not be a convention to the vote of the people. There is no direct judicial ruling on the question in this state, and, so far as I have ascertained, no other expression of Judicial opinion in this state.

The exact question however was passed upon by the Supreme Court of Indiana in 1917 in the case of Bennett v. Jackson (186 Ind. 533). The question of having a convention had not been submitted to the people of the state since 1914, when it was answered in the negative . The court held the act providing for the election of delegates unconstitutional on the ground that the legislature had no authority to call a convention without the expressed consent of the electorate and that its last recorded vote, namely in 1914 was against having a convention. The Indiana constitution like that of Pennsylvania contained no provision whatever for calling conventions. The court based its opinion on the ground that it is "an almost universal custom in all of the states of the Union" to submit the question of a convention to the electorate.

In State vs. Dahl, 6 N. D. 81 (1896), the Supreme Court of North Dakota was asked to declare void a resolution of the legislature providing for the submission to the electorate of the question of calling a convention; on the ground, among others, that it was a useless and unnecessary act. In upholding the propriety of the resolution the court quoted with approval the following language from the council of review of New York in returning to the assembly in 1820 a bill calling a convention:

> "The council therefore think it the most wise and safe course, and most accordant with the performance of the great trust committed to the representative powers under the con-

stitution, that the question of a general revision of it should be submitted to the people in the first instance, to determine whether a convention ought to be convened. The declared sense of the American people throughout the United States on this very point cannot but be received with great respect and reverence; and it appears to be the almost universal will, expressed in their constitutional charters, that conventions to alter the constitution shall not be called at the instance of the legislature without the previous sanction of the people, by whom those constitutions were ordained."

With regard to the precedents, Dodd (The Revision and Amendment of State Constitutions, page 47) gives the following list of cases in which the question of holding a convention was submitted to the electorate:

Massachusetts..... 1820, 1852;
New York..... 1821, 1845;
Virginia..... 1829, 1850;
Maryland..... 1850;
North Carolina.... 1835;
Pennsylvania..... 1835, 1871;
Missouri..... 1844;
Louisiana..... 1853, 1898;
Tennessee..... 1869;
Texas..... 1875;
Connecticut..... 1902.

Since January 1, 1911, the question has been submitted in the following cases:

California..... 1914, rejected; to be submitted again in 1920;
Colorado..... rejected in 1916;
Idaho..... rejected in 1918;
Illinois..... adopted in 1918;
Indiana..... rejected in 1914;
Louisiana..... rejected in 1915;
Massachusetts. adopted in 1916;
Nebraska..... adopted in 1918;
New Hampshire adopted in 1911 and again in 1916;
New York..... adopted in 1914 and rejected in 1916;
North Carolina rejected in 1918;
Ohio..... adopted in 1910;
South Dakota. rejected in 1914;
Tennessee.... rejected in 1916 and 1917;
Texas..... rejected in 1919;
Washington... rejected in 1918.

In some of these cases the question was submitted because the constitution expressly required it. At the present time the following thirty-four constitutions require submission of the question:

Alabama
Arizona
California
Colorado
Delaware

Florida
Idaho
Illinois
Iowa
Kansas
Kentucky
Maryland
Michigan
Minnesota
Missouri
Montana
Nebraska
Nevada
New Mexico
New Hampshire
New York
North Carolina
Ohio
Oklahoma
Oregon
South Carolina
South Dakota
Tennessee
Utah
Washington
West Virginia
Wisconsin
Wyoming
Virginia

(Index Digest of Constitutions, pages 22-23).

The author of the most recent work on constitutional conventions, after reviewing the authorities, concludes that "the practice of obtaining the popular approval for the calling of a convention may be said to have become a most the settled rule." (Hoar, Constitutional Conventions, page 60).

On the other hand, while there is no direct judical authority holding that the question of convention or no convention need not be submitted, there is judical aquiescense in the results of conventions called without the submission of the question to the people. Several of the earlier and three of the more recent state conventions have had no other prior sanction for their being than an act of the state legislature. The following conventions were called without the electorate first voting on the preliminary question of the need of a convention:

New York..... 1801;
Connecticut..... 1818;
Rhode Island..... 1824, 1834, 1841 and 1842;
New Jersey..... 1844;
North Carolina... 1876;
Louisiana..... 1879;
Mississippi..... 1890.

To this list may be added a majority of the secession and reconstruction conventions. (Hoar, Constitutional Conventions, page 66).

It should be noted that the conventions in Connecticut and Rhode Island were called by charter legislatures with wide powers, and that Connecticut submitted the question of calling a convention to the electorate in 1902, that Louisiana did the same in 1853, 1898, and 1915, and that New York and North Carolina are now obliged to do so by their constitutions. The present constitutions of Maine and Georgia however, expressly authorize the legislature to call conventions without submiting the question of a convention to the electorate. (Index Digest, page 21).

In Arkansas (The constitution of which contains no provisions relating to the manner of caling conventions) the legislature in 1917 provided for a convention without submitting the question of the need thereof to the electorate. The legislative act was apparently not attacked in the courts. The convention met and submitted a new constitution, that was, however, rejected in the election of 1918. In Louisiana the legislature in 1913 without submitting the question to the people authorized the election of delegates to a convention to formulate and promulgate without submission to the people amendments dealing with sewers and the state debt. The convention itself adopted amendments relating not only to these but to other subjects. The amendments were held valid however only in so far as they accorded with the act defining the powers of the convention (State vs. American Sugar Ref. Co. 137 La. 407, 1915). The question of the legality of the convention itself was not raised. In 1915, however, the question of a constitutional convention for general revision was submitted as it has been in 1853 and 1898. It is therefore fair to say that the practice in Louisiana at least in so far as a general revision of the constitution is concerned is in line with that of the majority of the states.

In view of this confusion of precedent and judicial decision, all that can be said is that the almost universal modern practice is for the legislature to submit the question of calling a convention to the people.

If we turn from custom and judicial decision to constitutional theory, we find an equal difficulty in coming to a positive conclusion. The constitutional argument in favor of requiring a prior submission of the question of calling a convention to the electorate may be stated as follows: The people have an inalienable right to adopt a new constitution. The legislature is the only body to enact a law providing the machinery by which this power may be exercised. But the machinery provided by the legislature must be such as to adequately enable the people to express their will to delegate their power to formulate a new constitution to an elected convention. To merely put before an elector the alternative of voting for a member of a convention who is to exercise for him the power of making a constitution, or of staying at home and permitting his neighbors to select the delegates without his help, is not enough. The electorate as a whole and each member thereof should have the power to pass on the question whether any delegation of the reserved power to alter or amend the constitution should take place.

The reasons just stated for requiring the prior submission of the question of a convention either do or do not appeal. The whole question is one of the degree in which the legislature may assume to act as the agents of the people authorized to determine whether or not the time has come when the people should delegate their power to

change the fundamental law of the state to a convention of elected delegates.

While, however, a postive answer cannot be given to the question asked in view of conflicting precedent and practice, and the inability to express a constitutional theory which decides the point and which is sure to meet universal acceptance, there is apparently no doubt that in view of the very conflict on the question, *it would not be the part of wisdom for the general assembly in this state to call a constitutional convention to pass on the changes recommended by this commission without first placing before the electorate of the state the question whether the convention should be called.* What has been shown to be the general, nay, almost universal practice, adds great weight to this conclusion.

From the information contained in Part II of this brief we find that from January 1, 1911 to December 31, 1919, twenty legislative proposals for a constitutional convention were submitted to the people of the various states and of these thirteen were rejected and only eight approved of which one was the Louisiana convention, of very limited authority, held in 1913. If in the thirteen cases where the proposals were rejected the majority of the electors who felt that no constitutional changes were necessary had had to wait to register their opinion until after the delegates had been elected, the convention had met and submitted its recommendations at another election, large sums of public moneys would have been expended for no useful purpose.

Question II.

Can the Question as to Whether the Convention Shall or Shall Not be Called be Placed Before the Electorate at the Same Time at Which Delegates to the Convention are Elected?

There are precedents for such a course. As I have already pointed out (Part 1 supra) the Act of June 19, 1891, P. L. 345, provided that at the general election in November the electorate should vote for or against the constitutional convention and at the same time elect delegates. The delegates were elected, but the majority against calling the convention was nearly 250,000 in a vote of 600,000.

The legislature of North Carolina passed a similar act on February 26, 1917, (Public Laws of N. C. 1917, page 114) which provided that at the general election to be held in 1918 the electorate of that state should vote for or against a convention and at the same time for delegates to a convention whose powers and duties were set forth in the act.

The only argument that has been called to my attention against the legality of asking the electorate to pass on the question of a convention at the same time that they elect delegates thereto is that the election of delegates involves the expenditure of public money in printing ballots, and if there is a primary election still other expense, all of which is useless if the people vote against the convention. It may be where there is a desire to have the convention called without delay that combining the two subjects will save the very considerable expense of a separate election. If this can be shown the argument that the expenditure of public money should not be made because it might be useless, would lose much of whatever force it may otherwise possess.

Question III.

Can the General Assembly Provide that the Convention May Adopt and Promulagte a New Constitution or an Amendment to the Present Constitution or Must the Changes Made by the Convention be Submitted to the Eletorate of the State?

The question is an academic rather than a practical one. Though, as we have seen, the constitutions of 1776 and 1790 were both declared in force without submission to the people, and this practice was followed in the adoption of their earlier constitutions by other states, to-day the universal custom in all states is to submit the work of a constitutional convention to the people for ratification or rejection. It is hardly to be supposed that our general assembly would take a different course.

In view of this universal custom, suppose the act submitting the question of convention or no convention to the electorate did not expressly provide that the convention should have power to adopt a new constitution and put the same into effect, it is practically certain that in voting for a constiutional convention all the electorate would be held to have delegated to the convention would be the power to formulate a constitution, not the power to adopt and promulgate it. On the other hand, if the act submitting the question of a convention to the electorate expressly said that the convention should have power to draft and promulgate a new constitution, then it is apparently equally certain that the electorate voting in favor of the convention would thereby expressly confer on such convention the power to adopt and promulgate a new constitution. There is no reason why the people should not make such a delegation of authority if they wish to do so. The answer to this third question therefore would seem to be that the general assembly cannot confer the power to promulgate a constitution on a convention, but they may propose to the people that they confer such power on a convention and that the power would be conferred if the majority of the electorate voting on the question voted in the affirmative.

The next or fourth question while not relating to the convention method of changing the constitution is closely related to the subject of the three questions just discussed.

Question IV.

Can The General Assembly Formulate an Amendment or a New Constitution in the Form of an Amendment and Place the Same Before the People, in Any Other Manner than that Prescribed in Article XVIII?

This question must necessarily be answered in the negative. Were it not for the provisions of Article XVIII the general assembly could not propose changes in the constitution to the people for their ratification. The people must first delegate their power to formulate a constitutional change. The present constitution in Article XVIII provides a definite method by which an amendment can be formulated by two successive legislatures. No such power exists in any one legislature. By adopting Article XVIII the people have expressed their will that their power as a whole to formulate amendments shall be vested not in any one legislature, but in two successive legisla

tures, the members of the second legislature to be elected after due publication of the amendment proposed by the preceding legislature. For the general assembly of 1921 to provide that the changes in the constitution recommended by the commission should be placed at once before the voters for their adoption or rejection, would be to attempt to exercise a power that the people have not vested in their legislative body.

There has been no direct decision on this point in this State, but the question has been, as we have seen, recently passed on in Indiana where in Ellingham vs. Dye (178 Ind. 336), the supreme court of that state held unconstitutional an act submitting an entirely new constitution to the electorate, on the ground that if it was to amend the existing constiution it did not comply with the provision for amendment contained therein, and if it was for a new constitution it was in excess of the powers of the legislature.

The remaining question relates to the extent of the constitutional changes which may be made by amendment under Article XVIII.

Question V.

If the Commission Recommend a New Constitution Will the General Assemblies of 1921 and 1923 Have the Right to Place Such New Constitution Before the Electorate in the Fall of 1923 as an Amendment of the Present Constitution?

In this state there is no precedent for such a course. A new constitution or a series of amendments practically amounting to a complete revision of the constitution have never been submitted to the electorate under the amending provision of the present constitution or the similar provision in the constitution of 1838.

There are, however, two precedents for such action in other states. In Michigan in 1874 and in Rhode Island in 1898 the legislature submitted to the electorate in accordance with the provisions of their existing constitutions a complete new constitution. (Act of March 26, 1874, Laws of Michigan, page 11. Laws of Rhode Island 1898, page 133). In neither case was the action of the legislature attacked in the courts but in both cases the instruments were rejected by the people, in the case of Michigan by a vote of 39,285 for and 124,034 against (Thorpe, Amercan Constitutions, Vol. 4, page 1976). It seems that this result was due in part to a feeling among the people that the legislature of that state had assumed too much in making a general revision. (Jameson, Consitutional Conventions, page 575). In a recent case the supreme court in Michigan in speaking of the power of the legislature to propose changes in the constitution said: "Single amendments might be submitted to a vote of the people by the legislature, but no power to provide for a general revision was ever conferred upon the legislature." (151 Mich. 337). The Michigan constitution, it is true, does provide for constitutional revision by a convention. Rhode Island, however, as we have seen, is the only state that is limited to the amendment method provided in its existing constitution.

The point at issue is the meaning of the word amendment in Article XVIII. The argument in favor of the position that there is no limitation on the character, variety, or extent of the changes that can be embodied in one amendment is based on the ordinary

use of the amendment in legislative procedure. Unless some special rule or procedure not generally recognized in deliberative assemblies stands in the way, there is no reason why a motion cannot be adopted to strike out all after the enacting clause an insert an entirely new text. Following this analogy, in spite of the absent of precedence, the constitution can be amended by repealing all after the preamble and inserting a new constitution. If this reasoning is regarded as conclusive there is, of course, no objection to submitting to the electorate at one time under the provisions of Article XVIII as one amendment an entirely new constitution or a series of amendments which, as a whole, practically amount to a new constitution.

The argument against the right of the general assembly to deal with a new constitution as an amendment which may be adopted under the provision of Article XVIII, is that an examination of the constitutional history of the state shows that the object of Article XVIII was to meet the desire for amendment as distinguished from complete revision of the existing constitution. The first article relating to amendments appears in the constitution of 1838. Prior to that time the only legal method of changing the constitution was a constitutional convention. The adoption of the amending article was not intended and has not deprived the people of their right to deliberate over the formation of a new constitution in the only manner in which all the people can be said to have the power to deliberate, namely, through a meeting of delegates specially constituted for that purpose. Constitutional change involves two processes. One of these is delibration and discussion, ending in the embodiment of the changes proposed in exact language; the other the final act of adoption. The convention method is the recognized method in this and all other states by which from colonial times the people as a whole have participated in the first step. For minor changes a convention is not needed. Therefore the people adopted article XVIII. Nothing is said in the article about a new constitution, or complete or even partial revisions, and it is not to be presumed that they intended to waive their right to take part through the machinery of a convention of specially elected delegates in the deliberation, discussion and formulation of a new constitution or of any extended revision of the constitution.

Whatever may be our individual judgment as to relative weight of these arguments, in the absence of any constitutional right to obtain an opinion from the supreme court, there would be unquestionably an element of risk in attempting to submit to the people under the machinery provided by article XVIII, a new constitution as a single amendment. It is possible that the supreme court might declare the new instrument adopted in this manner, not the constitution of the state. The risk, of course, would be materially decreased if the changes, no matter how sweeping, proposed by the commission were embodied in the form of a series of separate amendments.

PART IV.

The possible Forms in which the Constitution recommended by the Commission May be Embodied.

The commission may embody its proposed constitutional changes in the form of amendments to the present constitution, or in the form of a new constitution.

If the changes are embodied in a series of amendments:

(a) One amendment may be submitted for each section to be changed or omitted, and also one amendment for each new article and each new section to be added to an existing article, or

(b) Each article to which a change in more than one section is made may be submitted as one amendment.

If plan (a) was adopted to carry into effect the changes embodied in the preliminary draft it would necessitate over sixty separate amendments. This number could be considerably reduced by combining plans (a) and (b) and submitting all the changes in any one article as one amendment where the article has been extensively revised. The largest number of separate amendments yet submitted at one time to the electorate of a state were the 41 amendments to the constitution of Ohio submitted to the electorate of that state in 1910.

Again, if a series of amendments are submitted each amendment must be so far complete in itself that no matter what amendments are adopted or rejected the constitution as amended will be free from confusion. Thus in the present constitution, two or more sections may deal in whole or in part with the same subject matter. Where this occurs a change in one section may necessitate a change in another section. If each section as amended is submitted separately, and one section is adopted and the other defeated, serious confusion might result. For instance, in the preliminary draft, section 8 and 21 of article IV are both so amended as to make the office of secretary of internal affairs an appointive instead of as at present an elective office. If the amendment to section 8 was adopted and that to section 21 defeated, the constitution would declare in one section that the secretary of internal affairs should be appointed by the governor and in the other that he should be chosen by the people.

If the commission decide that it is advisable to embody their proposed changes in the form of a series of amendments, it will require no little ingenuity to overcome such difficulties. No, one, however, can say in advance of a knowledge of the changes finally adopted by the commission, and a patient attempt to embody the changes in a series of amendments, that the task will prove impossible.

PART V.

The Time which Must Elapse Before a New Constitution or Amendments to the Present Constitution Can be Adopted.

The commission will make its report to the general assembly which will meet in January 1921. If the changes recommended are embodied in the form of amendments, and the general assembly decides to proceed in respect to the recommendations under the pro-

visions of article XVIII of the present constitution, the earliest date in which they could become incorporated into the constitution would be at least three months after the amendments had been adopted by the general assembly of 1923. This means for all practical purposes that the amendments would not be adopted until the municipal election in November 1923. The general assembly of 1923 might postpone their submission to the electorate until the general election in November 1924.

If the general assembly of 1921 decides to adopt the convention method, they may at once appoint a date for an election to decide the question whether the people desire a convention to be called and at the same time elect delegates to the convention if the vote is favorable. If it was desired to avoid the expense of a special election, the question could be submitted and the election of delegates had at the regular municipal election in November 1921. If it was desired to first place the question of calling a convention before the people, this could be done at a special election in the spring of 1921, provided the general assembly would act with promptness in passing the necessary law. Again it might be practical to put the question of calling the convention before the electorate at the time of the fall primaries in 1921 and provide for the election of delegates in November if the people voted in favor of the convention. If this was done the nomination for delegates would have to take place in the 1921 fall primaries, in other words at the same election at which the question of convention or no convention was voted on, unless the general assembly provided a method for nominating the delegates other than at a primary.

From the foregoing it is clear that if any early constitutional convention is really desired by the general assembly of 1921, it is possible to have such a convention meet in January 1922. This means that the result of the labors of the convention, whether in the form of a new constitution or a series of amendments, can be placed before the people at the general election in November 1922. If the action of the convention is approved by the people a new constitution or a series of amendments might go into effect with the inauguration of our next governor.

Very truly yours,

WM. DRAPER LEWIS.

Secretary.

MEMORANDA AND BRIEFS No. 30.

MANDAMUS EVIL IN PHILADELPHIA.

Harrisburg, April 6, 1920.

Hon. Charles H. English,

Chairman of Special Committee on Municipalities.

Dear Sir: You have asked me to submit a memorandum on what is known as the mandamus evil in Philadelphia and the constitutional changes, if any, which may tend to modify the same.

There are three classes of mandamuses in Philadelphia which constitute most of the evil of the mandamus system. These are:

I. Mandamuses to pay judgments obtained in accident cases.

II. Mandamuses to pay land damages consequent upon the condemnation of land by councils or by the commissioners of Fairmount Park.

III. Mandamuses to pay the salaries of employes whose position or salaries a court or other body is permitted by statute to fix.

What actually happens is, in cases I and II, that a judgment having been obtained against the city, the court upon petition issues a mandamus execution directing the treasurer to pay the amount of the judgment with interest out of the first undesignated fund coming into his hands. In the third case, I think that a judgment is entered against the city in favor of the employe whose salary is to be paid, and that a similar mandamus execution is then issued.

The evils of the system are two:

1. It prevents a real budget system.
2. It entails waste of money.

Possible corrections of these evils may be obtained by:

I. As to accident cases, requiring council to estimate how much will be needed during the year to meet such judgments, putting this amount in the budget and making an appropriation for it.

II. In the land damage cases the enactment of statutory or constitutional provision requiring an official board to estimate what the damages will be before a condemnation ordinance can be passed and requiring appropriations in the amount of these estimates to accompany all condemnation ordinances, so that the estimated cost of the condemnations cannot exceed actual appropriations to pay the necessary land damages.

III. The courts and other bodies who may now create positions and fix salaries should be prevented from doing this by a statute or constitutional provision requiring all positions and salaries to come from councils or from the general assembly. The charter Revision committee prepared a careful act which specifically forbade the courts to issue any mandamuses to pay for salaries, supplies, rent or purchase price of real estate unless councils had made an appropriation specifically authorizing payment. The act also forbade the courts to compel councils to make an appropriation for such purposes or to compel councils to authorize the appointment of any employe.

If it is desired to insert in the constitution the principle set forth under III, a section worded somewhat as follows might serve:

ARTICLE MUNICIPALITIES, SECTION 16-A.

In Philadelphia county officers and municipal court judges shall annually submit to the chief executive of the city of Philadelphia estimates of the needs of their respective offices and courts. The councils of the city or other body vested by law with the power of appropriation shall have the same control over appropriations for the support of such county offices and

municipal courts as over appropriations for the support of a municipal office, except that the general assembly may by law designate the salaries of county officers and the salaries of judges of municipal courts.

Very truly yours,

WM. DRAPER LEWIS,

Secretary.

MEMORANDA AND BRIEFS No. 31.

CIVIL SERVICE REFORM.

Harrisburg, Pa., April 7, 1920.

Mr. George Wharton Pepper,

Commissioner.

Dear Sir: I understand you desire a memorandum on the constitutional provisions desired by any association devoted to the improvement of the civil service of the state.

The principal association of this character is the Pennsylvania Civil Service Reform Association; President, Mr. George Burnham, Jr.

I have ascertained that this association favors the following constitutional provision:

"Appointments and promotions in the civil service of the state and of all the civil divisions thereof including counties and cities, shall be made according to merit and fitness to be ascertained, so far as practicable, by examination, which so far as practicable, shall be competitive."

The source of the suggestion is amendment to the New York state constitution adopted 1894, which reads:

Article V. Section 9 * * * "Appointments and promotions in the civil service of the state, and of all the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, so far as practicable, by examination, which so far as practicable, shall be competitive.

The same principle with the use of the words "merit and fitness" is found in the Ohio constitution of 1912.

The reasons given by the association for the endorsement of the principle of the merit system may be stated under four heads:

(a) Experience shows that it is the most effective means of securing competent employes for the public service. The following states now have state civil service laws:

California	Massachusetts
Colorado	New Jersey
Connecticut	New York
Illinois	Ohio
Kansas	Wisconsin

(b) Spoils of office do *not* belong to the political party or faction in power to enable it to build up an organization to keep itself in power. Every citizen of the state in a democracy has an equal right to a fair chance to be appointed on his merits to positions in the public service. On this point, Mr. Roosevelt said:

> "The merit system of making appointments is in its essence as democratic and American as the common school system itself. It simply means that in clerical and other positions where the duties are entirely non-political, the applicants should have a fair field and no favor."

And Mr. Taft said:

> "If we selected employes according to the length of their noses it would be better than the political spoils system of appointment."

(c) The dominant political parties have each endorsed the merit system.

> "The civil service law has always been sustained by the republican party, and we renew our repeated declaration that it shall be thoroughly and honestly enforced and extended wherever practicable."—Republican National Platform, 1916.
>
> "We reaffirm our declarations for the rigid enforcement of the civil service laws."—Democratic National Platform, 1916.

And on this subject Elihu Root said:

> "The spoils system is not essential to effective party organization. On the contrary, it tends to prevent effective party organization. It tends to keep out of the organization the men whose services would be most effective."

(d) The civil service system is popular and always is endorsed by the voters when they get an opportunity to vote.

Below is the record of votes for and against the merit system in the various states where the question has been submitted to the electorate:

	For	Against	Majority For
Illinois:	411,676	121,132	290,544
(State civil service law.)			
Colorado:	75,301	41,287	34,014
(Amendment to state constitution.)			
Ohio:	306,767	204,580	102,187
(Constitutional provision.)			
New Jersey:	162,013	93,261	68,752
(Local adoption of state law by six counties and seven cities and Newark Schol District.)			
Total:	955,757	460,260	495,497

Two out of every three voters favor the merit system.

The reasons given by the Association for inserting a provision in the state constitution may be stated as follows:

(a) Because the principle is fundamental and essential in a democracy. Mr. Charles W. Eliot, President Emeritus of Harvard University has said:

> "Civil service reform is so fundamental that all other reforms must rest on it."

(b) The provision serves as a safeguard to protect the people against the power of those who desire to use the loaves and fishes of public office for their own political preferment.

(c) Somebody has said that the future of America depends upon her success in committing the administration in all its branches to the hands of experts, subject to democratic control. The merit system serves as a means of assisting in this process by making civil service an efficient system of public employment management.

Very truly yours,

WM. DRAPER LEWIS,

Secretary.

MEMORANDA AND BRIEFS No. 32.

SCHOOL—SUPPORT OF

Harrisburg, Pa., April 7, 1920.

Doctor Edgar F. Smith,

Chairman, Committee No. 5.

Dear Sir: I understand you desire me to submit a brief on state support of public schools and constitutional provisions relating thereto.

I submitted a series of question to Doctor Harlan Updegraff, Professor of Educational Administration, University of Pennsylvania.

The questions submitted to and answered by Doctor Updegraff were as follows:

I. What provisions have states other than Pennsylvania placed in their constitutions relative to the support of public schools?

II. How does Pennsylvania compare with other states in the amount contributed by the state government to public schools?

III. What factors may determine the proportion of total public school support that should be borne by the state and by the school district?

IV. How have the costs of schools in Pennsylvania compared with the costs of schools in other states?

V. How do schools of Pennsylvania compare in efficiency with other states?

VI. By what amounts should the costs of schools in Pennsylvania be increased in order to have her schools as efficient as those in other states?

VII. What is the language of the sections of the constitutions of other states dealing with support of public schools?

I submit herewith Doctor Updegraff's replies to these questions.

Very truly yours,

WM. DRAPER LEWIS,

Secretary.

REPLIES SUBMITTED BY HARLAN UPDEGRAFF, PROFESSOR OF EDUCATIONAL ADMINISTRATION, UNIVERSITY OF PENNSYLVANIA.

QUESTION I.

What provisions have states other than Pennsylvania placed in their constitutions relative to the support of public schools?

Forty-one of the forty-eight states provide in the constitutions for some measure of support for public schools. Those that do not are for the most part situated along the Atlantic coast. They are Illinois, Maine, Maryland, Massachusetts, New Hampshire, Rhode Island and Vermont. Thirty-four of these forty-one states establish a permanent school fund setting forth the sources from which it shall be derived and prohibiting its use for any purpose other than public schools. Twenty-four of the forty-one states provide for the levying of a state school tax of a varying number of mills ranging all the way from 1 mill in the State of Florida to 6 mills in New Mexico.

Six states authorize a state tax on corporations. These states are as follows: Arizona, Idaho, Indiana, Missouri, Nevada and Utah. Nine states, situated mostly in the south, provide for the levying of a state poll or capitation tax for the public schools. But four states provide for state appropriations outright, although a number of state constitutions require that the state shall appropriate each year for the public schools an amount equivalent to the interest upon the permanent school funds which in years gone by were spent by the state for other purposes.

Among other miscellaneous sources for the support of public schools mentioned in the constitutions of the various states are the following: fines for offenses against state laws in eight states, liquor taxes in two, taxes on circuses, on domestic animals and bank tax, one each.

The actual value of these common school funds and of property, such as public lands, the income from which is distributed among the public schools, very widely among the various states. In nine states there are no actual permanent school funds. In nineteen the amounts of the funds range from a few thousand, as in Pennsylvania, to five million; in seven states from $5,000,000 to $10,000,000. Ten states have funds varying in value from $10,000,000 to $50,000,000. In one state the amount is approximately $75,000,000, in another $90,000,000, and in one over $300,000,000.

Extracts from the constitutions of various states may be found under question VII.

QUESTION II.

How does Pennsylvania compare with other states in the amounts contributed by the state government to public schools?

The contributions which states make to the support of public schools are derived for the most part from the income of the permanent school funds and from appropriations. The amounts thus distributed, expressed in terms of the amounts per capita of the states' population, show a wide variation. In Pensylvania it is 97 cents. In eleven states the amount per capita is less than $1.00. In

twenty-one states the amounts are between $1.00 and $2.00; in eight, between $2.00 and $3.00; and in two states between $4.00 and $5.00 per capita. The ten states paying out less amounts to local schools than Pennsylvania are three New England states—New Hampshire, Massachusetts, and Rhode Island—five southern states, and New York and Illinois. The amount for Ohio is $1.04. The eight states which pay over $3.00 are New Jersey ($3.64), Michigan, Minnesota, Arizona, Utah, California, Maine and Nevada.

QUESTION III.

What factors determine the propostion of total public school support that should be borne by the state and by the school districts?

One method of studying this system is to ascertain the practices of other states. The following table gives the states which, in 1916, raised a greater per cent. of the income for public schools through state sources than did Pennsylvania:

STATES WHICH IN 1916 RAISED GREATER PER CENTS OF TOTAL INCOME FOR PUBLIC SCHOOLS THROUGH STATE SOURCES THAN DID PENNSYLVANIA.

1. Montana,	63
2. Alabama,	53
3. Mississippi,	52
4. Texas,	51
5. Kentucky,	46
6. Delaware,	46
7. Maine,	44
8. New Jersey,	44
9. Georgia,	44
10. Maryland,	39
11. Wyoming,	38
12. Arkansas,	34
13. Nevada,	33
14. Virginia,	30
15. Michigan,	28
16. Colorado,	24
17. California,	24
18. Louisiana,	24
19. Utah,	23
20. Vermont,	21
21. Arizona,	20
22. Wisconsin,	20
23. Washington,	19
24. South Dakota,	19
25. Minnesota,	18
26. Tennessee,	17
27. Indiana,	16
28. Oklahoma,	15
29. North Carolina,	15
30. Idaho,	14
31. Missouri,	14
32. New Mexico,	14
33. North Dakota,	13
34. Connecticut,	13
35. Illinois,	12
36. Nebraska,	12
37. West Virginia,	11
38. Florida,	11
39. Pennsylvania,	10.32
40. Ohio,	9.66
41. New York,	8.18

It will be noticed from the above table that there are nine states in which proportions are smaller than 10 per cent. which is the proportion for Pennsylvania. Four states have over 50 per cent. of

the total support of public schools coming from the state treasury, nine have over 40 per cent., fourteen have more than 30 per cent., and twenty-two more than 20 per cent.

A second method of determining the amounts that any state should contribute to education is, first, to consider the principles that under lie state support of schools, second, to analyze data respecting the educational conditions in the state, and third, to apply these principles to the situation as found.

The principles which should underlie the state support of schools may be stated as follows: (See Schoolmen's Week Proceedings, 1919, pp. 135-137)*

1. "School support should be partly central and partly local. The proportion that each agency should bear is dependent upon the economic and social conditions in the various districts in the state.

2. "That method of support of public schools is best which makes possible the best realization of proper aims of education in every school in the state and for every child of the state. It is not commonly known, or if known, it is not commonly appreciated, that our schools are state schools and not local schools, and that our state education officers have the obligation resting upon them of maintaining a system of public schools throughout the state that is adequate and efficient.... The system of school support must then complement local support in such a way as to secure the working out in each local school of those aims, standards and procedures which the state approves.

4. "Regulations of central agencies (the legislature, state boards, etc.) regarding expenditure of central funds should be limited to the statements of the purposes for which the money is to be spent and of the standards which should be maintained in the conduct of the schools. As large a degree of initative and of freedom of action should be left to the local boards and officers as the certainty of securing these purposes and standards makes possible....

*4. "In the appropriation of funds to local districts, the plan followed by any state should satisfy as many certain desirable objectives as possible. These, for the purpose of this paper, will be termed 'criteria' and may be stated as follows:

(a) State funds should not be given local districts until the state authorities in charge of the fund have assured themselves that the minimum standards imposed by the state upon local districts have been maintained during the period to which state aid applies....

(b) The state should encourage new phases of school work by granting partial support. We have examples of this in our state in the granting of state aid to support vocational schools and in the proposed law to assist in the transportation of children to school in rural districts.

(c) The conditions under which the state funds are given should be such as constantly to stimulate local communities to provide the most complete and the most efficient school

*Harlan Updegraff. "Application of State Funds to the Aid of Local Schools." Schoolmen's Week Proceedings, 1919.

*Harlan Updegraff. "Application of State Funds to the Aid of Local Schools." Schoolmen's Week Proceedings, 1919, pp. 135-137.

systems that their economic conditions permit. The criterion is not given attention in Pennsylvania at the present time.

(d) The state should seek through the distribution of its funds to equalize the educational opportunities among the various districts to the greatest possible degree in order that each child in the state, irrespective of his residence, may have equal advantages with every other child. While this criterion is written into the act creating the State Board of Education in that it is made one of the duties of this board to seek to realize it, nevertheless, Pennsylvania has not up to the present time, expended any appreciable amounts of its funds for this purpose....

(e) The state, through the distribution of its funds, should equalize the educational burdens of the various districts to the greatest possible degree. While the validity of this criterion has been reorganized in Pennsylvania, our system of distribution of state school funds satisfies it but to a slight degree. The fact that the teachers' quota is the same for all districts in the state, whether salaries are low or high, may at first glance seem to be an application of this criterion. This obtains only to the extent that salaries of teachers are in direct proportion to the financial abilities of the districts to support schools. This is far from the truth; some districts paying high salaries are much poorer than others paying the same salaries. In rural districts, some of which are very rich and other very poor, low salaries generally prevail."

Sufficient funds must be provided through state sources to realize all of these desirable objectives just stated. The amounts that will be necessary will be dependent upon the social and economic conditions existing therein. For example, if there is little interest in public education in a large number of localities, larger amounts must be set aside to realize the second and third objectives than in those states in which the interest in education is fairly uniform throughout all of the localities. Again in the same way large differences in wealth of local districts will make necessary large appropriations to realize the fourth and fifth objectives; while in those states in which wealth is fairly evenly distributed less amounts of state money will be required.

The question then arises as to whether the interest in schools is more or less uniform throughout Pennsylvania than in most states, and also whether the wealth is evenly or unevenly distributed among the various local districts.

It is rather difficult to answer either of these questions with strong assurance. Reliable data are not at hand and we are compelled, in forming a judgment to rely upon the observation of those who have a wide acquaintance with schools in various states. It is self-evident to observers that there are, for example, certain mining districts or certain manufacturing towns and also certain backward rural communities in which interest in education is very low. On the other hand, there is a deep interest in education in certain suburban towns, in certain progressive cities and in a few rural communities. On the whole, however, it seems that there are an unusually large number of districts in Pennsylvania having poor schools. Below are quoted certain facts relative to the cost of schools in Pennsylvania and also to the character of service rendered, which confirm this judgment. In

fact it is not far from the truth as these facts will show, to classify Pennsylvania, in these respects, as among the less progressive educational states in the Union. Certainly she lags behind most of the states east of the Mississippi and north of the Mason and Dixon line.

When we turn to a comparison of the wealth of the school districts, we have data that are more reliable. A table is given here showing the true value of the assessed wealth behind each teacher employed in 931 districts in 21 counties in Pennsylvania, the data being for the year 1918. This table is to be read as follows: In sixty-four districts the wealth behind each teacher is less than $20,000; in seventy districts between $20,000 and $40,000, etc.

*Harlan Updegraff. "Application of State Funds to the Aid of Local Schools." Schoolmen's Week Proceedings, 1919, pp. 140.

TABLE—VARIATION IN TRUE VALUATION OF ASSESSED WEALTH BEHIND EACH TEACHER IN 931 DISTRICTS IN 21 COUNTIES IN PENNSYLVANIA.

True Valuation in Thousands	Total
Less than 20,	64
20–39,	70
40,	121
60,	142
80,	87
100,	79
20,	68
40,	59
60,	52
80,	34
200,	23
20,	20
40,	19
60,	17
80,	12
300,	9
20,	5
40,	8
60,	6
80,	2
400,	2
20,	3
40,	4
60,	1
80,	3
500,	2
20,	1
40,	0
60,	2
80,	0
600,	1
20,	0
40,	2
60,	0
80,	1
700,	2
20,	0
40,	1
60,	2
80,	0
800,	0
20,	0
40,	0
60,	0
80,	2
900,	0
20,	0
40,	0
60,	0

80,	0
1000,	0
20,	0
40,	1
60,	0
80,	1
1100,	0
20,	0
40,	1
60,	0
80,	1
1200,	1
Total,	933

Regarding this table, the author makes the following comments:

"1. There is a wide variation among the districts in the amounts of wealth behind each teacher. The district highest in wealth has taxable resources 60 times as much as the lowest.

2. These wide variations exist in all classes of districts.

3. Taken as groups, the first-class districts have the greatest wealth in proportion to the number of teachers; the second-class, next; the third-class, next; while the fourth-class districts have the least.

4. The variation in the wealth of districts is wider in the fourth than in the third, wider in the third than in the second, while the two first-class districts are almost equal in this repect—$343,938 for Pittsburgh and $322,919 for Philadelphia.

5. Certain fourth-class districts have the greatest amounts of wealth per teacher—even greater than the wealthiest of the first and second-class districts.

6. Certain third-class districts have still greater wealth than the wealthiest of the first and second-class districts.

7. From all this, it follows that one cannot infer the wealth of a district from the class to which it belongs. Nor can it be said that rural districts have uniformly less wealth than city districts.

"These facts and the conclusions drawn from them should have much weight in the shaping of a financial school policy for the state of Pennsylvania. But they are not all. Many of the wealthy districts have a relatively small number of children, while, on the other hand, many of the poor districts have a large number of children. Districts of these two types frequently lie alongside of each other. They are like two men walking along the road, each carrying a basket—the one, a pigmy, with a basket so large that it almost hides him; the other, a giant, with a basket so small that it is not, at first, observed. Many districts are totally unable to give their children adequate schooling and deserve much assistance from the state, other districts are in themselves wealthier than the state taken as a whole and are fully able to support schools without little or no assistance from the central government. Between these two extremes of the pigmy and the giant are many districts—some more like the former, others more like the latter. The amounts of money that should be received by each from the state should be apportioned in such a way as to satisfy the last two of the five criteria stated above." (Schoolmen's Week Proceedings, p. 143-144.)

Comparable data with other states is not available in any large amount. We know, however, that the differences between the wealth behind each child in the various towns of Massachusetts is not nearly so great as in Pennsylvania, probably about one-tenth as much. In other words, while the wealthiest district in Massachusetts is only six times as wealthy as the poorest, in Pennsylvania the wealthiest district is sixty times as wealthy as the poorest. Ordinarily we would think that Massachusetts is a typical state as far as the distribution of wealth is concerned. If this be true, it would seem to follow that Pennsylvania is unusually conspicuous for its extremes of wealth in local communities. It is altogether probable that in no other state in the union are the differences so large.

The conclusion growing out of the application of these principles in the light of the facts as found is, that Pennsylvania should have unusually large amounts for public education furnished and distributed by the state government in order to encourage the many backward districts to make new undertakings, to stimulate all districts to do their best, to provide educational opportunities in poor districts equal to those of the rich districts and in so far as may be found practicable, to equalize the educational burdens. It would seem, therefore, that instead of Pennsylvania ranking thirty-eight in the amount per capita expended by the state for schools and thirty-ninth in the proportion of total school support furnished by the state, the state appropriation should be increased to the point where she would rank at least among the highest quarter or in other words among the first twelve states. This means that from one-third to one-half of the total support of schools in Pennsylvania should be derived from state sources instead of the present 10 per cent.

QUESTION IV.

How have the costs of schools in Pennsylvania compared with the costs of schools in other states?

The comparisons are made in the following tables with costs of schools (a) in the Northern Atlantic States composed of all nine states north and east of and including Pennsylvania and New Jersey, (b) in the North Central States composed of all those states—12 in number—west of Pensylvania and north of the Ohio River including on the west, Kansas, Nebraska and the Dakotas, (c) in the Western Division, 11 in number—composed of 11 states in the extreme western part of the country, (d) in New York and (e) in New Jersey. Unit costs are furnished on different bases. Data are all for the year 1915-1916 and are from the Report of the Commissioner of Education for 1917, the latest data available.

EXPENSES OF PUBLIC SCHOOLS PER CAPITA IN 1915-1916.

States.	In All Schools.		In City Schools.
	Per Capita of Population.	Per Capita of Daily Attendance.	Per Capita of Daily Attendance.
North Atlantic States,	6.10	44.71	46.74
North Central Division,	6.36	40.08	44.66
Western Division,	7.71	54.25	59.52
New York,	6.33	49.32	53.31
New Jersey,	7.14	49.88	49.23
Pennsylvania,	5.73	40.26	38.79

Each of the three comparisons of cost point to the same conclusion. The costs for education in Pennsylvania are very low when compared with the costs of education in the more progressive states. While it is true that the costs of education have increased in Pennsylvania during recent years, it is a fact that as regards the salaries of teachers at least, the increases have not been so large as the increases in the United States as a whole, and that the differences between the increases in Pennsylvania and in other states have become constantly larger with the succeeding years The following table gives the facts to support this amendment:

TABLE 4. AVERAGE SALARIES OF TEACHERS IN UNITED STATES AND IN PENNSYLVANIA AS GIVEN IN REPORTS OF U. S. COMMISSIONER OF EDUCATION FOR YEARS INDICATED.

Year.	MEN.				WOMEN.			
	U. S.	PA.	Difference.		U. S.	PA.	Difference.	
			Dol.	Per Cent.			Dol.	Per Cent.
1888,	41.75	38.54	3.28	8.3	34.21	30.16	4.05	13.4
1893,	46.39	43.94	2.45	5.6	38.46	33.04	5.42	16.4
1903,	49.98	44.82	5.16	11.5	40.51	34.11	6.40	18.8
1913,	78.29	65.82	12.49	18.9	61.31	48.69	12.62	28.0
1915,	82.35	68.43	14.92	21.8	64.72	50.14	14.58	29.1
1916,	85.36	68.63	17.73	25.8	66.88	50.55	16.33	32.3

The low standards of teachers salaries in Pennsylvania may be made still more evident by Table 5 which shows that in 1916, the average annual ratings of all teachers in New York was 106 per cent. and in New Jersey 85 per cent. higher than in Pennsylvania. The differences in amounts per pupil are not so great because the schools

of Pennsylvania are more crowded than those of the other states. In fact there was no other state in the nation in which teachers received so small a proportion of the total expense. On the other hand, expenditures for operation and maintainance of the school plant consumed unusually large proportions of the total expense. The same is true of expenditures for new buildings, although to a less degree. It would seem as though school boards have been more interested in the material elements of the school than the spiritual, and have taken better care of the janitor, the contractor and the school supply men than of the teachers.

TABLE 5. AVERAGE ANNUAL SALARIES OF ALL TEACHERS AND EXPENSES OF SALARIES PER CAPITA OF AVERAGE DAILY ATTENDANCE 1915-16.

	Average Annual Salary.	Salaries per Capita of Average Attendance.
North Atlantic States,	728.56	29.41
North Central States,	569.65	26.25
Western Division,	797.47	37.95
New York,	967.20	36.35
New Jersey,	872.34	31.08
Pennsylvania,	470.18	22.51

These data show that in order to have schools in Pennsylvania maintained on the same plane of efficiency as other states, a radical change must be made in the policy of the state regarding school support, for the quality of service rendered in teaching, as in other vocations, is influenced to a considerable degree by salaries received. The interests of education are of sufficient importance to the state to warrant the protection of the schools by such a provision in the constitution as would guarantee adequate support for teachers salaries especially upon the part of successive legislatures so that the needs of the schools will not be weighed against the demands of other less vital interests of the state. This protection is afforded in the conduct of local schools in Pennsylvania by reason of the fact that local school boards are independent of municipal governments. In certain other states where city councils vote money to the school boards, the schools almost invariably suffer when put in competition with other interests. Such a condition should not be permitted longer to exist in the legislature of the state of Pennsylvania.

QUESTION V.

How do schools of Pennsylvania compare in efficiency with other states?

It is very difficult to answer this question with any degree of conclusiveness. There are, however, certain reliable objective data available which shed some light upon the question. The tables given below contain comparisons of the same states as those furnished in the section above:

TABLE 6. DATA RELATIVE TO ENROLLMENT, ATTENDANCE OF PUPILS IN VARIOUS GRADES OF SCHOOLS, AND NUMBER OF PUPILS PER TEACHER.

	Per cent. of school population enrolled.	Per Cent. Enrolled in Each Grade.			No. of days attended by each pupil enrolled.	No. of pupils per teacher.
		Elementary.	Secondary.	Higher.		
North Atlantic States,	71.95	88.6	9.2	2.2	146.6	25.7
North Central States,	77.41	88.6	8.9	2.5	134.4	22.1
Western Division,	84.28	86.1	11.4	2.5	127.8	21.4
New York,	69.59	88.2	9.4	2.4	154.3	24.6
New Jersey,	76.39	90.	9.2	1.	142.9	25.2
Pennsylvania,	70.86	90.3	7.3	1.9	139.1	28.1

These tables seem to indicate that Pennsylvania cannot be classed among the more progressive states of the union in that she is not so successful in geting her children into the school, in that the average number of days in the school term is not so many, and that the children do not have as many days of schooling per year. It is also clear that when the children are in school, those of Pennsylvania do not receive the same amount of attention from the teacher as in other states, by reason of the fact that the number of pupils per teacher is so many more, nor do so many of them advance into the high schools. Less proportion of children in the schools, less attention given to the children by the teacher during the school term, and smaller amounts of education given are objective facts which seem to assign Pennsylvania schools to a low rank among the more progressive school system of the Union

It is pertinent to inquire at this point whether the teachers who instruct the children while they are in school are as efficient as those in other states. While our data upon this question is not so complete as upon the points just treated, there is one deficiency in Pennsylvania which is almost appalling and degrading which there can be but little doubt, namely, that the teachers in 40 per cent. of the one-room rural schools have not had any high school education whatsoever. It does not seem probable that any other state with which we have been making comparisions has a record so poor as this. While Pennsylvania could make a better showing in comparison with other states upon the basis of teachers in the city schools, yet it must be remembered that many of the best teachers have in recent years been attracted to other states because of the higher salaries offered in those states.

QUESTION VI.

By what amount should the costs of schools in Pennsylvania be increased in order to have her schools as efficient as those in other states?

Without stating definite figures which should be offered only after a careful study of the entire educational situation in the state both in the past and probably future, there are certain considerations which may be pointed out that have an important bearing upon the problem of future support.

(a) In order to have made it possible in 1916 for Pennsylvania's schools to render as good service as the best states in the Union, it would have been necessary to increase her expenses beyond what they then were by 20 to 25 per cent, all of which should have gone into teachers salaries. In addition, economics should have been introduced in the operation and maintainance of the school plants and used in part for needed equipment and supplies and in part for further increases in salaries.

(b) The increased cost of food, clothing, rent, school supplies and equipment since that time amounting approximately to 100 per cent., would seem to make necessary a doubling of expenses, not as they were, but as they should have been at that time.

(c) It should not be forgotten that there are greater demands upon the schools for increased funds by reason of the recent world war. It is not only necssary to offer greater diversity in the curriculum in both the elementary and secondary schools and at a greater increase of expense per pupil than was necessary for the traditional school subjects, but in addition thereto education must be provided for adults, particularly those who are foreign born and of which there are a large number in the state of Pensylvania.

(d) It follows that expenses of schools in Pennsylvania should be more than doubled above what they were in 1916, in order to put her schools on the same plane of efficiency as the schools in the more progressive states.

(e) This increased cost of schools should come largely from state sources of taxation. An increase in the proportion of expenses that should be paid by the state from 10 per cent. to from 34 to 50 per cent. suggested above would for the most part provide the funds here indicated as desired. This state assistance should be made certain by a constitutional provision indicated in an earlier section of this article.

QUESTION VII.

What is the language of the sections of the constitutions of other states dealing with support of public schools?

The Indiana constitution furnishes a typical example of a state in which the permanent school fund is still intact.

Article VIII, Section 1. "Knowledge and learning generally diffused throughout a community, being essential to the preservation of a free government, it shall be the duty of the general assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement, and to provide by law for a general and uniform system of common schools, wherein tuition shall be without charge, and equally open to all.

Section 2. The common-school fund shall consist of the congressional township fund, and the lands belonging thereto;

The surplus revenue fund;

The saline fund, and the lands belonging thereto;

The bank-tax fund, and the fund arising from the one hundred and fourteenth section of the charter of the State Bank of Indiana;

The fund to be derived from the sale of county seminaries, and the moneys and property heretofore held for such seminaries; from the fines assessed for breaches of the penal laws of the state; and from all forfeitures which may accrue;

All lands and other estates which shall escheat to the state for want of heirs or kindred entitled to the inheritance;

All lands that have been or may hereafter be granted to the state, where no special purpose is expressed in the grant, and the proceeds of the sales thereof; including the proceeds of the sale of the swamp lands granted to the State of Indiana by the act of Congress, of the 28th of September, 1850, after deducting the expense of selecting and draining the same;

Taxes on the property of corporations that may be assessed by the general assembly for common-school purposes.

Section 3. The principal of the common-school fund shall remain a perpetual fund, which may be increased, but shall never be diminished; and the income thereof shall be inviolably appropriated to the support of common schools, and to no other purpose whatever."

A small number of the states did not protect and conserve the grants coming from the national government—Pensylvania belongs to this group. Some of these states have, however, taken care that the interests of the schools should not suffer by assuming the amounts spent as a debt to the schools of the state. The following provision in the Louisiana constitution furnishes an illustration:

Article 257. "The debt due by the state to the free-school fund is hereby declared to be the sum of $1,130,867.51 in principal, and shall be kept on the books of the auditor and treasurer to the credit of the several townships entitled to the same; the said principal being the proceeds of the sales of lands heretofore granted by the United States for the use and support of free public schools, which amount shall be held by the state as a loan, and shall be and remain a perpetual fund, on which the state shall pay an annual interest of 4 per cent. and that said interest shall be paid to the several townships in the state entitled to the same, in accordance with the act of Congress, No. 68. approved February 15, 1843."

An example of a state school tax provided for by constitutional enactment is found in Arkansas.

Section 3. "The general assembly shall provide by general laws for the support of common schools by taxes, which shall never exceed in any one year 3 mills on the dollar on the taxable property of the state, and by an annual per capita tax of $1.00 to be assessed on every male inhabitant of this State over the age of 21 years: Provided, The general assembly may, by

general law, authorize school districts to levy by a vote of the qualified electors of such districts a tax not to exceed 7 mills on the dollar in any one year for school purposes."

MEMORANDA AND BRIEFS NO. 33.

INITIATIVE AND REFERENDUM.

Harrisburg, Pa., April 12, 1920.

Mr. Gifford Pinchot,

Commissioner.

Dear Sir: You have requested me to submit a brief explaining the state-wide initiative and referendum, constitutional provisions relating thereto in other states, and giving detailed results of their operation since January 1, 1914

EXTENT TO WHICH THE STATE-WIDE INTIATIVE AND REFERENDUM HAS BEEN ADOPTED.

The referedum as applied to constitutional amendments proposed by the legislature or by constitutional convention is an established institution in all of the American states. The referendum as applied to laws and the initiative as applied to laws and constitutional amendments is a comparatively recent development. The referendum as applied to laws made its first appearance in the United States in the constitution of South Dakota in 1898. Since then it has been introduced into Utah (1900), Oregon (1902), Nevada (1905), Montana (1906), Oklahoma (1907), Maine (1908), Missouri (1909), Arkansas and Colorado (1910), Arizona, California and New Mexico (1911), Idaho, Ohio, Nebraska and Washington (1912), Michigan (1913), North Dakota (1914), Maryland (1915), Mississippi (1914), and Massachusetts (1917). The initiative was successively written into the constitutions of Utah (1900), Oregon (1902), Montana (1906), Oklahoma (1907), Maine, Missouri and Michigan (1908), Arkansas and Colorado (1910), Arizona and California (1911), Ohio, Idaho, Nevada, Nebraska and Washington (1912), North Dakota (1914), Mississippi (1914) and Massachusetts (1917).

The constitutional provisions of Utah and Idaho are not self-executing; and the legislatures of these states have never enacted enabling legislation.

The initative, as usually defined in state constitutions where it exists, is the power reserved to the people "to propose and adopt laws independently of the legislature." In some states both statutes and constitutional amendments may be initiated; in others, only statutes.

Two forms of the initative as applied to the adoption of statutes are in use. Under one system, the initiated measure is proposed directly to the voters by the initiators. This is known as the direct initiative. The other plan requires measures to be first submitted to the legislature. If the legislature adopts the proposal and enacts it as presented, there is no submission to the voters unless the law is placed on the ballot by referendum petition. If, however, the

legislature does not pass the law as presented, it goes before the electorate for approval or rejection. This is called the indirect initiative.

In the constitutions of some states, as for example, Michigan, Nebraska and New Mexico, the same limitations apply to the power of the people to initiate and adopt laws as apply to the power of the legislature. In Montana appropriation measures and local and special legislation are specifically excepted from the general power conferred upon the people to initiate measures.

The referendum is defined as the "power reserved to the people to approve or reject at the polls any act of the legislature." In some states it may be applied to "an act, item, section or part of an act."

Practically all of the states in which the referendum is in force, limit the power thus reserved to the electorate. A very common exception prevents its application to "laws necessary for immediate preservation of the public peace, health or safety." Another exception, almost as general, includes "laws for the support of the state government." Another, "laws for the support of state institutions." Less general limitations prevent the reference to the people by petition, of appropriation laws generally, tax laws, laws for the payment of the public debt, interest thereon, or for the creation or funding of public debt, laws passed by a two-thirds vote of the legislature, and "such orders or resolutions as pertain solely to facilitating the performance of the business of the legislature, of either branch or of any committee or officer thereof, or which appropriate money therefor or for the payment of salaries fixed by law, or emergency measures."

The initative and referendum, when found in state constitutions, are included in the section of the state constitution which creates the legislature. "The legislative authority shall be vested in the legislature, consisting of a senate and house of representatives but the people reserve to themselves the power to propose laws and to enact or reject the same at the polls, and also reserve power, at their own option, to approve or reject at the polls any act passed by the legislature."

It will be observed: First that the constitutions of states using the initiative and refendum do not confer less power on the legislature than is given it in other states. The legislative power is fully conferred upon the legislature. Second, the initiating and referring powers are reservations, not assumptions, of authority. The expression, "the people reserve to themselves," merely emphasizes the fact that theoretically the constitution of every state is the pronouncement of the people, and the initiative and referendum go no further than to make possible the exercise of a power inherent in the body of the electorate.

In a number of the states not only may acts of assembly be submitted to the voters by petition, but the legislature itself may provide that as a condition precedent to the taking effect of an act, it shall first have been approved by the electorate. In some states this prerogative has been very freely exercised by the legislature as will be seen by the appendix herewith submitted.

Illinois has a modification of the initiative and referendum in the form of what is known as a public opinion" provision. Measures may be placed on the ballot by petition to obtain an advisory vote of instructions to the legislature, which is, however, not binding upon the law-makers. As indicated, the vote is merely advisory.

PROCEDURE.

(a) FOR THE OPERATION OF THE "DIRECT INITIATIVE."

The direct initative is universally brought into operation by petition. In some states, the petition is addressed to the secretary of state; in others to the governor.

The petition must contain the text of the proposed law or constitutional amendment, and must be signed by a specified percentage of the voters of the state. The required percentage is usually at least 8 or 10. In Missouri, eight per cent. of the voters in at least two-thirds of the congressional districts of the state must sign. In Montana, two-fifths of the whole number of counties of the state must each furnish as signers eight per cent. of the legal voters of the state, and at least eight per cent. of the voters of the entire state must sign the petition. In Washington, while the required percentage is ten, it is provided that in no case shall more than 50,000 names be required. In Nebraska, ten per cent. of the voters must sign, but in the ten per cent. must be included five per cent. of the legal voters in each of two-fifths of the counties of the state.

In many states, petitions may be circulated in sections.

Signers, in most states, must give their residence address, and in some their election precinct and ward. Usually the circulator of a petition or a section of a petition must make affidavit that the signers are qualified and that signatures are genuine.

Usually initiative petitions must be filed with the secretary of state, whose duty it is to determine whether a petition bears the requisite number of signatures. The whole number of electors who voted for governor at the regular election last preceding the filing of any petition is, in most states, the basis upon which the secretary of state makes his calculation to determine whether the requisite percentage of the electorate has signed the petition.

In some states sections of the petition are filed with the county clerk in the counties in which the respective sections have been circulated; and in California the county clerks must certify to the secretary of state the number of qualified signatures on the sections filed with him.

In a number of states, petitions must be filed at least four months before the measure is to be voted on.

If the petition is found insufficient, in a number of states a supplemental petition may be filed. If the petition is sufficient, or if it has by supplemental petition been made sufficient, the secretary of state submits the measure to the electorate—in most states at the next biennial or regular election unless the legislature shall have ordered a special election for the purpose of voting on initiated measures. The secretary of state is required to prepare a title for the designation of the proposed measure on the ballot.

Where two or more provisions on the same ballot conflict, the Washington State Constitution requires that the conflicting measures be submitted on the ballot in such manner that the voter can express two preferences, namely, (a) as between either measure and neither; and (b) as between one and the other. If a majority of those voting on the first issue is for neither measure, both fail; but if a majority is for either, then the measure receiving the higher vote becomes effective.

A number of constitutions provide that in so far as measures adopted at the same election conflict, either in whole or in part, the measure receiving the highest affirmative vote shall be the law as to all conflicting provisions.

In most states having the direct initiative, a majority of those who vote on any measure determine the question of its adoption. In Washington this is, however, subject to the proviso that the vote cast upon the measure shall have been equal to at least one-third, and in Nebraska thirty-five per cent. of the vote cast at the election. Oklahoma requires that a majority of the votes cast at the election shall be necessary to adoption.

Measures adopted by the electorate become effective in several states, "when approved by the people," in others, from the date of official declaration of the vote; in others, upon proclamation by the governor, which in Nebraska is required to be within ten days, and in Colorado, within thirty days of the completion of the official canvass; in Maine, thirty days after the governor's proclamation, which must be made within ten days after the completion of the canvass; in Michigan, ten days after the official declaration of the vote by the secretary of state, except constitutional amendments which becomes effective thirty days after the election at which they are adopted; and in California, five days after the official declaration of the vote by the secretary of state.

In all states, measures adopted by the electorate are not subject to the governor's veto power, and in some states measures so adopted cannot be repealed or amended by the legislature. In Washington the legislature is forbidden to amend or repeal such measures within two years, and in Nevada for three years after their enactment at the polls. In most states, however, the legislature has a free hand to undertake to change laws initiated and adopted, subject of course to the power of the required percentage of the electorate to file referendum petitions submitting to the voters the question whether the repealing or amending statue shall stand.

(b) FOR THE OPERATION OF THE "INDIRECT INITIATIVE."

Direct initiative petitions are addressed to the governor or secretary of state; indirect initiative petition to the legislature.

The number of signers of indirect initiative petitions is, generally speaking, less than is required upon direct initiative petitions. It varies from three per cent to ten per cent. of the voters. Ohio requires three per cent., with the proviso that petitions be filed from each of one-half of the counties of the state, bearing the signatures of not less than one-half of the designated percentage of electors of such counties. North Dakota requires ten per cent. of the state's legal voters, including ten per cent. of the voters in a majority of the counties of the state. Maine requires petitions to be signed by at least twelve thousand voters.

Petitions are filed with the secretary of state who transmits them to the legislature. In some states, petitions must be filed at least ten days before the commencement of any session of the legislature; in others, not less than thirty days before the commencement of any *regular* session; in Maine, at least thirty days before the close of a legislative session.

The legislature is directed to act upon measures so submitted to it, in some states within forty days; in Ohio within four months; in Maine and Washington at any time during the session. In a number of states such measures take precedence of all others except appropriation bills, until disposed of. In most states the legislature must enact or reject the initiated measure without change or amendment.

In several states the legislature may refer any initiated measure to the electorate; in South Dakota it must be submitted to the people by the legislature; in Maine, if the governor vetoes the measure and his veto is sustained, the measure goes to the voters.

In most states the failure of the legislature to enact the initiated measure, or to act upon it within the prescribed period, automatically requires its submission to the voters, but in Ohio a supplemental petition signed by the same number of voters as signed the original petition must be filed within ninety days after rejection of the measure or after the lapse of the period allowed for legislative action. If no such supplementary petition is filed there is no submission to the voters. If the legislature enacted the initiated measure with amendments the supplementary petition may require the submission of the measure as enacted by the legislature to be submitted at the polls, rather than the measure as originally suggested. In the latter event, the act of the legislature is not operative until approved by the voters.

In many states, the legislature may propose a substitute for the initiated measure, in which event the initiated measure and the substitute suggested by the legislature are submitted to the electors at the same election.

(c) FOR THE OPERATION OF THE REFERENDUM

Referendum procedure is very similar to the procedure established for the use of the initiative. Measures are referred as well as initiated by petition, except that, as previously pointed out, the legislature may, in a number of states, voluntarily submit measures to popular vote.

It is customary in states in which the referendum power is reserved to the voters, to provide that measures subject to referendum, "except in case of emergency" shall go into effect within sixty or ninety days after the final adjournment of the legislative session at which enacted. This provision is obviously intended to enable referendum petitions to be prepared, circulated and filed, before legislative action takes effect.

Referendum petitions in most states require a smaller percentage of signers than initiative petitions. The most popular percentage is five. Maine requires at least ten thousand signers; Washington six per cent. of the voters but not more than thirty thousand. In Ohio, Montana, Missouri, North Dakota, Nebraska and Maine, there are provision requiring a stated percentage of the signers to be residents of a specific number of the states' geographical or political subdivisions.

Generally speaking, the filing of a referendum petition suspends the operation of a law until approved by the electors; but in several states a petition to have this effect must be signed by an extraordinary number of voters,—fifteen per cent. in Montana and tweny-five per cent. in New Mexico.

"Emergency measures" which are either entirely exempt from submission to the electorate by referendum petition, or if subject to submission, are operative until rejected at the polls, are carefully defined in practically all constitutions. In some states, the legislature may declare any measure to be an emergency measure, but in most states, the constitution specifically limits the measures which may be so termed.

In Michigan any appropriation act is an "emergency measure," in Arizona and South Dakota, measures for the support of the state government and state institutions come within the emergency class; in a number of states, "measures immediately necessary for the preservation of the public peace, health or safety." This last general classification is limited, in California, so as to exclude any measure creating or abolishing any office or changing the salary, term or duties of any officer, or granting any franchise or special priviledge; and in Maine to exclude (1) any infringment of the right of home rule for municipalities, (2) any franchise or license to a corporation or individual to extend over a period exceeding one year, or (3) any provision for the sale, purchase or renting for more than five years, of real estate.

"Emergency measures" must contain a statement that they are such, and in some states, the facts constituting the emergency must also be stated. They are usually required to pass the legislature by a two-thirds vote.

Referred measures, except emergency measures, become effective, in most states, upon approval by the electors, but in Maine, thirty days after the governor shall have announced by proclamation that the voters approved. "Emergency measures," as previously stated, remain effective until rejected by the voters or repealed by the legislature.

As a general rule, acts of the legislature referred to and ratified by the electors, may be amended at will by subsequent legislatures; but the Nevada constitution provides that only direct vote of the people can alter, amend or repeal a measure which has been sanctioned at the polls.

PUBLICITY FOR INITIATED AND REFERRED MEASURES.

In Oregon, California, Ohio and a number of other states having the initiative and referendum, a pamphlet is prepared by the state and mailed to each registered voter containing (1) the full text of all proposed laws, referred acts of the legislature and proposed constitutional amendments to be voted upon at an ensuing election; (2) a brief explanation of each proposal or referred law or amendment; and (3) brief arguments for and against each proposed or referred measure. In California the presiding officer of the senate designates the persons who shall prepare the opposing arguments on the measures to be submitted; in Ohio, the legislature attends to this detail if in session,—otherwise the governor.

The publication and circulation of a compact, readable pamphlet of this character is regarded, by friends of the initiative and referendum, as a very essential requirement. Upon first impression it would appear that the cost of giving publicity of this sort to measures to come before the electors would be prohibitive in a populous state such as Pennsylvania. Actual investigation of the cost of this form of publicity in states having the initative and referendum, and of

the present method of advertising constitutional amendments in this state, indicates conclusively that, for the same number of laws or amendments, the circulation of a state pamphlet would be no more expensive than newspaper advertising.

Actual investigation in initiative and referendum states has also demonstrated the fact that the so-called "state pamphlet" is very extensively read, in part at least, by the voters. Probably a very small percentage of the electors read the pamphlet from cover to cover, but those in a position to know state that a large number of persons familiarize themselves with the details and study the merits and demerits of at least some of the measures upon which they are to vote.

PERCENTAGE VOTING ON INITIATED AND REFERRED MEASURES.

A table is hereto appended showing the vote cast on all measures initiated and referred to the voters under the initiative and referendum since 1914. The percentage of those voting for candidates for office, who give expression to their views on measures, is shown. It will be observed that while, upon some measures, the vote is comparatively small, the average vote cast is surprisingly high.

ACTUAL OPERATION OF THE INITIATIVE AND REFERENDUM.

By reference to the table hereto appended, the reader may gather at a glance a fairly accurate idea of the nature of the measures initiated and referred and of the action of the electorate thereon. As might be expected, measures of every variety find their way to the ballot; but the voters in all states would seem to be rather conservative in so far as concerns the adoption of radical or fantastic laws or amendments. Speaking generally, a smaller percentage of measures proposed by initiative petition succeeds in winning popular approval, than of measures submitted to the people by the legislature or referred by petition, after passage by the legislature.

For the statistics in Exhibit A, which set forth in detail the results of the operation of the initiative and referendum since January 1, 1914, I am indebted to Mr. Judson King, Executive Secretary of the National Popular Government League of Washington, D. C.

Very truly yours,

WM. DRAPER LEWIS,

Secretary.

APPENDIX

INITIATIVE AND REFERENDUM RESULTS.

General Election of 1914.

I. Status.

Fifteen states had workable initiative and referendum provisions in their constitutions at this time.

All made use of them excepting Nevada.

One state, Maryland, had referendum only, but did not use it.

II. Number of measures submitted.

By initiative petition,	91	
By referendum petition,	23	
Total by initiative and referendum petition,		114
By the legislatures,		75
Grand total,		189

III. Adoption and rejection of measures.

	Adopted	Rejected	Totals
Proposed by initiative petition,	25	66	91
Proposed by referendum petition,	9	14	23
Submitted by state legislatures,	33	42	75
Totals,	67	122	189

IV. The vote cast upon measures.

(As compared with vote for candidates in state elections.)

Average percent of vote cast upon highest measures, all states,	89
Average percent of vote cast upon lowest measures,	66
Average percent of vote cast upon ALL measures,	74

ARIZONA.

General Election, November 3, 1914.

Total Vote for Governor, 51,007.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Prohibition amendment,	25,887	22,743	3,144	96	Adopted
2. Amendment limiting prohibition elections to eight year periods,	16,059	26,437	10,398	83	Reject'd
	Yes.	No.	Majority.	% Vote.	Result.
3. Amendment, $5,000,000 bonds for state highways,	13,215	23,499	9,284	72	Reject'd
4. Amendment, I. & R. measures not to be vetoed, amended or repealed,	16,567	16,484	83	65	Adopted
5. Amendment creating a state reclamation service,	14,701	17,994	3,293	64	Reject'd
6. Statute requiring that 80% of the employes of any company or individual be qualified voters or native born citizens of the U. S.,	25,017	15,323	10,894	77	Adopted
7. Statute for old age and mothers pensions,	25,827	12,394	13,433	75	Adopted
8. Statute abolishing capital punishment,	18,129	19,381	1,252	74	Reject'd
9. Statute creating Miami County,	5,878	30,055	24,177	74	Reject'd
10. Statute forbidding blacklisting,	18,207	17,444	763	70	Adopted
11. Statute on taxation—owner of property may assess his own property, but state reserves right to take over property at valuation so assessed,	13,032	21,277	8,245	67	Reject'd
12. Statute making appropriation for California Exposition of 1915,	10,995	22,434	11,439	65	Reject'd
13. Statute establishing state contract system, state banking system and printing plant,	16,754	15,853	901	64	Adopted
14. Statute regulating electrical construction,	18,871	12,256	6,615	61	Adopted

15 Statute for semi-annual payment of taxes,	13,842	15,934	2,192	58	Reject'd
By referendum petition:					
1. Statute for 3 cent per mile railroad fare,	20,968	12,210	8,758	65	Adopted
2. Statute regulating the changing of county seats,	14,255	17,740	3,845	65	Reject'd
3. Statute regulating creation of new counties,	10,756	21,152	10,396	63	Reject'd
4. Statute regulating pardons and reprieves of criminals and creating state board of pardons and paroles,	15,425	13,554	1,971	57	Adopted
By the legislature:					
NONE.					

ARKANSAS.

General Election, November 3, 1914.

Total Vote for Governor, 135,517.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Amendment raising the bond limit of municipalities, (Note: Amendments required majority of all votes cast at election. Hence this amendment failed.)	54,782	40,441	14,341	70	Reject'd
2. Statute prohibiting child labor,	72,313	25,300	47,013	72	Adopted
3. Statute for newspaper publicity on submitted measures,	55,552	40,728	14,824	71	Adopted
By referendum petition:					
NONE.					
By the legislature:					
1. Amendment fixing the salary of members of the legislature,	43,919	49,101	5,182	68	Reject'd
2. Amendment for election of lieutenant governor,	46,572	45,206	1,366	68	Adopted

CALIFORNIA.

General Election, November 3, 1914.

Total Vote for Governor, 926,754.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petitions:					
1. Amendment abolishing poll tax,	405,375	374,487	30,888	84	Adopted
2. Amendment enlarging deposits of public moneys in banks by broadening kinds of security by banks to state,	236,573	324,558	87,985	60	Reject'd
3. Amendment for city and county consolidation and annexation on contiguous territory,	248,112	318,224	70,112	61	Reject'd
4. Amendment regulating annexation of contiguous territory in event of consolidation of city and county government,	293,901	287,185	6,716	63	Adopted
5. Amendment for prohibition,	365,536	524,781	159,245	95	Reject'd
6. Amendment that prohibition if carried as above, be suspended until Feb. 15, 1915,	448,648	226,688	221,960	73	Adopted
7. Amendment prohibiting a prohibition election for eight years,	355,394	435,701	80,307	86	Reject'd

	Yes.	No.	Majority.	% Vote.	Result.
8. Amendment for property qualification for voters at bond elections,	312,193	337,951	25,758	70	Reject'd
9. Bond issue of $1,250,000 for proposed State buildings at Los Angeles,	285,796	320,302	34,506	65	Reject'd
10. Bond issue of $1,800,000 for completion and construction of buildings for University of California.	413,020	239,332	173,688	70	Adopted
11. Statute for universal 8-hour day,	282,692	560,881	278,189	91	Reject'd
12. Statute abolishing professional prize fighting; permit amateur boxing,	413,741	327,569	86,172	80	Adopted
13. Statute regulating investment companies (Blue Sky law proposed by investment companies),	249,500	353,812	104,312	65	Reject'd
14. Statute establishing Torrens land title system,	359,757	224,846	134,911	63	Adopted
15. Statute for 1 day of rest in 7; Sunday law,	290,679	457,890	167,211	81	Reject'd
16. Statute for drugless practice,	223,217	462,335	239,138	74	Reject'd
17. Statute permitting absent electors to vote,	244,855	390,333	145,478	68	Reject'd
By referendum petition:					
1. Red light abatement act,	402,629	352,821	49,808	81	Adopted
2. Statute (Blue Sky) regulating investment companies (referred by investment companies),	343,805	288,084	55,721	68	Adopted
3. Act for nonsale of game,	353,295	361,446	8,151	77	Reject'd
4. Act creating state water commission,	309,954	301,817	8,137	66	Adopted
By the legislature:					
1. Amendment abolishing appeal to higher courts of civil and criminal cases upon merely technical grounds,	378,237	182,073	196,164	60	Adopted
2. Amendment permitting public bonds or interest thereon to be paid at any place inside or outside of state,	306,195	206,479	99,716	55	Adopted
3. Amendment exempting from taxation educational institutions of collegiate grade,	331,599	293,721	37,878	67	Adopted
4. Amendment permitting state, county or municipality to condemn neighboring property or land for public purposes,	259,192	307,155	47,963	61	Reject'd
5. Amendment exempting from taxation until 1935 vessels of over 50 tons burden,	359,176	301,969	57,207	71	Adopted
6. Amendment permitting Alameda county to vote $1,000,000 bonds for World's Fair,	390,833	202,128	188,705	64	Adopted
7. Amendment authorizing municipalities to own and operate public utilities,	231,274	278,129	46,855	55	Reject'd
8. Amendment providing that when a city acquires lands outside its boundaries, it shall pay taxes to county thereon,	344,432	216,612	127,820	60	Adopted
9. Amendment authorizing municipalities and counties to exempt from taxation for local purposes in whole or part, personal property of certain kinds,	267,318	375,634	107,316	69	Reject'd
10. Amendment permitting adoption of preferential ballot in party primaries,	240,600	294,265	53,665	57	Reject'd
11. Amendment increasing assembly pay roll expenses,	87,315	494,272	506,957	63	Reject'd

		Yes.	No.	Majority.	% Vote.	Result.
12.	Amendment establishing home rule in adoption of municipal charters,	285,338	226,679	58,659	55	Adopted
13.	Amendment authorizing governor to call extra sessions of district courts of appeal,	203,674	322,891	119,217	57	Reject'd
14.	Amendment giving legislature increased control of irrigation, reclamation and drainage districts,	335,047	216,865	118,182	59	Adopted
15.	Amendment permitting assumption by county officers of certain municipal functions,	261,219	225,530	35,689	52	Adopted
16.	Amendment changing home-rule amendment; grants municipalities jurisdiction in all local affairs without need of specifying them in city charter,	284,757	214,312	70,445	54	Adopted
17.	Amendment giving state railroad commission power to fix public-utility rates in municipalities,	291,665	260,589	31,076	59	Adopted
18.	Amendment permitting irrigation districts to own stock in foreign corporations,	349,684	185,168	164,516	58	Adopted
19.	Amendment empowering State railroad commission to fix value of a condemned public utility upon request of a municipality,	291,836	244,379	47,457	57	Adopted
20.	Amendment changing method of election of and procedure in, constitutional conventions,	271,896	274,325	2,429	59	Reject'd
21.	Amendment authorizing legislature to establish minimum wage for women and minors,	379,311	295,109	85,202	73	Adopted
22.	Amendment for direct election of U. S. Senators,	404,283	190,969	213,314	64	Adopted
23.	Resolution calling convention to revise state constitution,	180,111	442,687	262,576	67	Reject'd
24.	Bond issue, 3,000,000 for additional state buildings in Sacramento,	294,728	267,717	27,011	61	Adopted
25.	Bond issue, $1,000,000 for State buildings in San Francisco,	300,028	257,119	42,909	60	Adopted
26.	Bond issue, $750,000 to improve State Fair Grounds at Sacramento,	301,764	259,721	42,042	60	Adopted
27.	Bond issue, San Francisco Harbor improvements,	408,644	167,589	241,055	62	Adopted

COLORADO.

General Election, November 3, 1914.

Total Vote for Governor, 266.871.

		Yes.	No.	Majority.	% Vote.	Result.
	By initiative petition:					
1.	Amendment for prohibition,	129,589	118,017	11,572	93	Adopted
2.	Amendment prohibiting the initiative measure again within six years,	55,667	112,537	56,870	63	Reject'd
3.	Amendment authorizing three-fourths verdict by juries in civil cases and allowing them to serve as jurors,	67,130	77,488	10,358	54	Reject'd

	Yes.	No.	Majority.	% Vote.	Result.
4. Amendment making public utilities of newspapers, ...	35,752	91,426	55,674	48	Reject'd
5. Amendment authorizing special elections for I. and R. measures at call of governor on 25 per cent. petition, ...	40,643	90,977	50,334	49	Reject'd
6. Statute levying half mill road tax annually, ...	117,146	54,844	62,302	64	Adopted
7. Statute for a child welfare commission, ...	68,242	72,122	3,880	53	Reject'd
8. Statute for probation of criminals, ...	62,561	68,512	5,951	49	Reject'd
9. Statute abolishing "assumption of risk" as a legal doctrine,..	69,006	60,298	8,708	48	Adopted
By referendum petition:					
1. Statute that deputy sheriffs must be electors in those counties wherein they are appointed, ...	49,116	66,836	17,720	43	Reject'd
2. Statute regulating fruit commission men, ...	39,448	67,454	28,006	40	Reject'd
3. Statute establishing a public utility commission (urged by the corporations), ...	39,703	65,182	25,479	39	Reject'd
4. To refer Sections 35, 36, and 37 of public utility law as above, ...	37,663	63,603	25,490	38	Reject'd
By the legislature:					
1. Amendment giving greater powers to state board of equalization, ...	55,987	55,275	712	42	Adopted
2. Amendment giving power to cities and towns to issue 60-year bonds, ...	39,589	65,206	25,617	39	Reject'd
3. Amendment for publicity pamphlets in advertising submitted measures, ...	48,301	56,259	7,958	39	Reject'd

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MAINE.

General Election, November 3, 1914.

Total Vote for Governor, 141,592.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition: NONE.					
By referendum petition:					
1. Statute creating public utilities commission for regulation and control of public utilities, ..	67,365	37,008	30,357	74	Adopted
By the legislature: NONE.					

MICHIGAN.

General Election, November 3, 1914.

Total Vote for Governor, 440.488.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Amendment defining and regulating fraternal insurance socities,	92,392	291,766	199,374	87	Reject'd
By referendum petition: NONE.					
By the legislature:					
1. Amendment for absent voting,	190,510	175,948	14,562	83	Adopted
2. Amendment, bond issue for road construction aud improvements,	164,333	202,087	37,754	83	Reject'd
3. Amendment empowering counties to issue bonds for drain and improvements of farm land,	165,290	199,873	34,583	83	Reject'd

MISSOURI.

General Election, November 3, 1914.

Total Vote for Governor, 618,194.

	Yes.	No.	Majority.	% Vote.	Result.
By iuitiative petition:					
1. Amendment for women suffrage,	182,257	322,463	140,206	81	Reject'd
2. Amendment, $50,000,000 issue of road bonds,	76,574	378,530	301,956	73	Reject'd
3. Amendment for local option in road districts on raising funds for roads,	80,935	373,302	292,367	73	Reject'd
By referendum petition:					
1. Statute for full train crew,	159,892	324,384	164,492	78	Reject'd
2. Statute making counties the uuits in local option elections,	172,909	311,285	138,376	78	Reject'd
3. Statute substituting bi-partisan board for police commissioner in large cities,	131,382	306,942	175,560	70	Reject'd
4. Statute substituting appointed bi-partisan board for excise commissioners in large cities,	134,449	303,757	169,308	70	Reject'd
By the legislature:					
1. Amendment changing and limiting the initiative and referendum amendment of 1908,	138,039	334,310	196,271	76	Reject'd
2. Amendment, pensions for the blind,	214,951	255,717	40,766	76	Reject'd
3. Amendment 10 cents per $100 property tax for good roads,	112,497	346,995	234,498	74	Reject'd
4. Amendment, special road levy with local option relation,	117,041	333,576	216,535	72	Reject'd
5. Amendment, increase pay of legislators,	89,629	355,326	265,697	71	Reject'd
6. Amendment to raise debt limits of Kansas City to permit municipal ownership of public utilities,	123,596	312,651	189,055	70	Reject'd

	Yes.	No.	Majority.	% Vote.	Result.
7. Amendment permitting increased tax rate in cities for subway purposes, ...	117,197	316,959	199,762	70	Reject'd
8. Amendment to simplify charter changes for cities, ...	140,475	290,562	150,087	69	Reject'd

MONTANA.

General Election, November 3, 1914.

Total Vote for Congressmen, 81,502.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Workmen's compensation act,	36,991	44,275	7,284	99	Reject'd
2. Statute to consolidate the state universities and colleges, ...	30,465	46,311	15,846	92	Reject'd
3. Statute for farm loan act, ..	45,162	27,780	17,282	89	Adopted
By referendum petition:					
1. Statute permitting boxing contests and creating state commission to regulate, ...	34,440	42,581	8,141	93	Reject'd
By the legislature:					
1. Amendment for woman suffrage, ...	41,302	37,588	3,814	96	Adopted
2. Amendment for increase in school tax levy, ...	28,703	46,265	17,762	91	Reject'd

NEBRASKA.

General Election, November 3, 1914.

Total Vote for Governor, 238,693.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Amendment for woman suffrage, ...	66,883	148,110	81,227	90	Reject'd
By referendum petition:					
1. Removal of university and consolidation with other state colleges, ...	90,738	100,842	10,104	79	Reject'd
2. Statute for workman's compensation, ...	92,513	85,777	6,736	74	Adopted
3. Statute creating an armory in a certain county and appropriating money therefor, ...	40,520	133,451	92,931	72	Reject'd
By the legislature:					
1. Amendment for uniform taxation, ...	88,068	82,136	6,932	71	Adopted
2. Amendment for five-sixths for jury verdict in civil cases and criminal cases under felonies,	103,891	63,596	38,295	70	Adopted
3. Amendment fixing terms of office and salaries for state officials, ...	89,385	76,013	13,372	69	Adopted

NEVADA.

General Election, November 3, 1914.

Total Vote for Congressmen, 20,626.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition: NONE.					
By referendum petition: NONE.					
By the legislature:					
1. Amendment for woman suffrage, ...	10,618	7,179	3,439	86	Adopted
2. Amendment omitting from the official oath the requirement that the one taking it never fought a duel.	9,859	3,630	6,129	65	Adopted

NEW MEXICO.

General Election, November 3, 1914.

Total Vote Not Obtainable.

Total Vote for Governor, 1916, 66,551.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition: (Note: The constitution provides no initiative.)					
By referendum petition: NONE.					
By the legislature:					
1. Amendment prohibiting county officials from serving more than two terms, ...	20,282	18,486	1,814	58	Adopted
2. Amendment to revise revenue system of the state, ...	18,468	13,593	4,875	48	Adopted
3. Amendment prohibiting state executive officers to hold office for more than two terms,	18,474	12,257	6,217	46	Adopted

OHIO.

General Election, November 3, 1914.

Total Vote for Governor, 1,130,651.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Amendment on home rule on the subject of intoxicating liquors (proposed by the wets), ...	554,548	546,248	8,300	97	Adopted
2. Amendment for state-wide prohibition (proposed by the drys), ...	503,292	586,663	83,371	96	Reject'd

	Yes.	No.	Majority.	% Vote.	Result.
3. Amendment for woman suffrage, ...	334,160	517,611	183,451	75	Reject'd
4. Amendment for forbidding classification of property for tax purposes, ...	224,598	551,977	327,379	68	Reject'd
By referendum petition: NONE.					
By the legislature: NONE.					

OKLAHOMA.

State-wide Primary Election, August 4, 1914.

Total Vote, 182,145.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Statute to re-enact direct system of taxation, ... (Note: Lacked 2,078 votes of constitutional majority.)	88,994	45,232	43,762	73	Reject'd
2. Amendment to make drunkenness cause for removal from office, (Note: const. majority, 23,761.)	114,833	31,659	83,174	90	Adopted
By referendum petition:					
1. Statute to abolish gambling and slot machines, ...	73,770	67,562	6,208	77	Adopted
2. Statute to abolish gambling and horse racing, ...	76,695	68,875	7,817	79	Adopted
By the legislature:					
1. Amendment giving legislature certain powers in levying taxes in aid of common schools, .. (Note: Lacked 1,419 votes of constitutional majority.)	89,653	56,918	32,735	80	Reject'd

OKLAHOMA—2.

General Election, November 3, 1914.

Total Vote for Governor, 253,682.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Amendment reducing number of appellate courts, ...	105,529	64,782	40,747	67	Reject'd
2. Amendment to reduce state tax levy, ...	117,675	57,120	60,555	68	Reject'd
3. Amendment for tax on mine production, ...	107,342	62,380	44,962	66	Reject'd
4. Amendment for uni-cameral legislature, ...	94,686	71,742	22,944	65	Reject'd

(Note: All the above failed of adoption, not having received a constitutional majority of all votes cast "in the election," as provided in the Oklahoma constitution for amendments submitted by the legislature or any measure proposed by initiative petition.)

Referendum measures for adoption require a majority of the vote cast "on the measure."

OREGON.

General Election, November 3, 1914.

Total Vote for Governor, 210,566.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Amendment for eight hour work day,	49,360	167,883	118,523	103	Reject'd
2. Amendment for $1,500 tax exemption,	65,495	136,193	70,698	96	Reject'd
3. Amendment prohibiting sale of river beds, reserving same for municipal docks,	67,110	111,113	44,003	85	Reject'd
4. Amendment for state-wide prohibition,	136,842	100,362	36,480	112	Adopted
5. Amendment abolishing capital punishment,	100,552	100,395	157	95	Adopted
6. Amendment for a specific graduated personal extra tax,	59,186	124,943	65,757	87	Reject'd
7. Amendment extending terms of county officers for two to four years,	82,841	107,039	24,198	90	Reject'd
8. Amendment for proportional representation,	39,740	137,116	97,376	84	Reject'd
9. Amendment to abolish state senate,	62,376	123,429	61,053	88	Reject'd
10. Amendment creating state department to give work to unemployed,	57,859	126,201	68,342	87	Rejectd'
11. Amendment for the equal assessments and taxation of all property with $300 exemption,	43,289	140,507	97,218	87	Reject'd
12. Statute for eight hour day for women workers,	88,489	120,296	31,807	99	Reject'd
13. Statute for non-partisan nominations for judges,	74,323	107,263	32,940	86	Reject'd
14. Statute permitting cities to construct and operate municipal wharves and docks,	67,128	104,564	37,436	81	Reject'd
15. Statute consolidating offices of the corporation commissioner and the insurance commissioner,	55,469	120,154	64,685	83	Reject'd
16. Statute reducing requirements for practice of dentistry,	92,722	110,404	17,682	96	Reject'd
17. Statute for appointive commission to prepare new tax code for submission to legislature,	34,436	143,468	109,032	84	Reject'd
18. Statute abolishing desert land transfering duties to state land board and transfering duties to state land board,	32,701	143,366	110,665	84	Reject'd
19. Statute creating an elective nominating convention to propose nominees for regular primaries,	25,057	153,638	128,581	85	Reject'd
By referendum petition: NONE.					
By the legislature:					
1. Amendment creating office of lieutenant governor,	52,040	143,804	91,764	93	Reject'd
2. Amendment requiring voters in Oregon to be citizens of the United States,	164,879	39,947	125,032	97	Adopted
3. Amendment permitting consolidation of city and county government,	77,392	103,194	25,802	86	Reject'd

	Yes.	No.	Majority.	% Vote.	Result.
4. Amendment permitting state to lend credit for road construction,	49,759	135,550	85,791	88	Reject'd
5. Amendment omitting that "all taxes be equal and uniform" and providing for levy and collection under general law,	59,206	116,490	57,284	83	Reject'd
6. Amendment providing for classification of property for tax purposes,	52,362	122,704	70,342	83	Reject'd
7. Amendment increasing pay of legislators,	41,087	146,278	105,191	89	Reject'd
8. Statute for tax levy to re-establish normal school at Ashland, southern Oregon,	84,041	109,643	25,602	94	Reject'd
9. Statute for tax levy to re-establish state school at Weston,	87,450	105,345	17,895	91	reject'd

SOUTH DAKOTA.

General Election, November 3, 1914.

Total Vote for Governor, 98,141.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Statute for new primary election law,	37,106	44,697	7,591	83	Reject'd
2. State amending local option law,	38,000	51,779	13,779	91	Reject'd
3. Statute amending charter and fixing a course of study at Aberdeen normal school,	27,538	49,382	21,844	78	Reject'd
By referendum petition: NONE.					
By the legislature:					
1. Amendment for woman suffrage,	39,605	51,519	11,914	93	Reject'd
2. Amendment reducing interest on school fund loans,	45,554	35,102	10,452	82	Adopted
3. Amendment removing the limit from the term of county superintendents of schools,	32,092	45,733	13,641	79	Reject'd
4. Amendment permitting legislature to fix percentage on petitions for initiative and referendum in municipalities,	28,266	43,162	14,936	73	Reject'd
5. Amendment providing state board for charitable and penal institutions,	29,601	44,107	14,506	75	Reject'd
6. Amendment providing for four year terms for legislators,	29,746	45,051	15,305	76	Reject'd
7. Amendment authorizing legislature to select substitute judge on supreme bench when a member is an interested party,	36,317	36,543	226	74	Reject'd
8. Amendment authorizing cities and counties to construct and operate irrigation works,	32,958	40,457	7,499	75	Reject'd
9. Resolution for a constitutional convention,	34,832	51,585	16,573	88	Reject'd

WASHINGTON.

General Election, November 3, 1914.

Total Vote for U. S. Senator, 345,279.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Statute for state-wide prohibition,	189,840	171,208	18,632	104	Adopted
2. Statute, "blue sky" law against sale of fraudulent stocks,	142,017	147,298	5,281	84	Reject'd
3. Statute to abolish the bureau of inspection of public offices,	117,882	167,080	49,198	82	Reject'd
4. Statute prohibiting private employment agencies from charging fees for service to working men,	162,054	144,544	17,510	89	Adopted
5. Statute requiring employers to provide first aid in the more hazardous employments,	143,738	154,166	10,428	86	Reject'd
6. Statute for convict road work,	111,805	183,726	71,921	85	Reject'd
1. Statute for universal eight hour day,	118,881	212,935	94,054	96	Reject'd
By referendum petition: NONE.					
By the legislature:					
1. Amendment providing against alien land ownership,	55,080	212,542	157,462	77	Reject'd
2. Statute providing irrigation system for Quincy Valley,	102,315	189,065	86,750	85	Reject'd
3. Statute creating a teachers retirement fund,	59,051	252,356	193,305	90	Rejected

SPECIAL ELECTION OF 1915.

CALIFORNIA.

Special Election, October 26, 1915.

Ordered by the Legislature. For Measures Only.

Highest Vote on Any Measure, 269,648.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition: NONE.					
By referendum petition:					
. Statute extending the principle of "nonpartisan" elections to state officers,	112,681	156,967	34,386	100	Reject'd
2. Statute establishing "nonpartisan" ballot in state primaries,	106,377	151,067	44,690	95	Reject'd
By the legislature:					
1. Amendment to increase term of superior court judges from 6 to 12 years,	47,229	213,067	165,838	96	Reject'd
2. Amendment, term of judges filling vacancies,	124,610	125,124	514	93	Reject'd

	Yes.	No.	Majority.	% Vote.	Result.
3. Amendment, rural credits; to permit the state to loan its credits to private persons and corporations, ...	124,247	132,320	8,073	95	Reject'd
4. Amendment, regulating deposit of public moneys, ...	92,981	151,845	58,864	91	Reject'd
5. Amendment requiring bond issues to be carried by two-thirds vote, ...	121,210	127,160	5,950	92	Reject'd
6. Amendment permitting cities to condemn land for park purposes, ...	92,048	155,786	63,738	92	Reject'd
7. Amendment to permit legislature to adopt new taxation system	42,158	201,597	159,439	90	Reject'd
8. Amendment exempting churches from taxation when admission is charged for entertainments,	94,460	168,171	73,711	97	Reject'd
9. Amendment, county charters, .	85,571	152,697	67,126	88	Reject'd

OHIO.

Special Election, November 2, 1915.

Ordered by the Legislature. For Measures Only.

Highest Vote on Any Measure, 1,025,346.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Amendment for state-wide prohibition, ...	484,969	540,377	55,408	100	Reject'd
2. Amendment, quadrennial elections for all county officers,	207,435	604,463	397,028	89	Reject'd
3. Amendment, exemption of state and local bonds from taxation,	337,124	401,083	63,959	72	Reject'd
4. Amendment that after a second defeat at the polls no proposal should be submitted to the voters either by the legislature or by initiative for six years, ("Stability amendment" proposed by wets), ...	417,384	482,275	64,891	88	Reject'd
By referendum petition:					
1. Statute to reapportion the congressional districts of the state, ...	291,987	329,095	37,108	61	Reject'd
2. Statute to vest licensing and control of liquor traffic in county boards instead of state control. Wet measure, ...	242,671	355,207	112,536	58	Reject'd
By the legislature: NONE.					

GENERAL ELECTIONS OF 1916.

I. STATUS.

14 states used the initiative and referendum in these elections.
3 states had the initiative and referendum, but did not use them. (Ohio, Mississippi and Nevada.)
2 states had the referendum, but did not use it. (Marylaand and New Mexico.)

II. NUMBER OF MEASURES SUBMITTED.

By initiative petitions:		
Constitutional amendements,	37	
Statute laws,	21	
		58
By referendum petitions,		12
Total by initiative and referendum,		70
Referred by the legislatures:		
Constitutional amendments,	23	
Statutes and resolutions,	5	
		28
Grand total,		98

III. ADOPTIONS AND REJECTIONS.

	Adopted.	Rejected.	Totals.
Proposed by initiative petitions,	15	43	58
Referred by referendum petitions,	4	8	12
Referred by the state legislatures,	16	12	28
Totals,	35	63	98

IV. THE VOTE CAST UPON MEASURES.

(Compared with vote for candidates.)

Average percent of vote cast on highest measures,	91.2
Average percent of vote cast on lowest measures,	68.8
Average percent of vote cast on all measures,	78.6

ARIZONA.

General Election, November 7, 1916.

Total Vote for Governor, 58,293.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Amendment prohibiting liquor to be imported into state,	28,473	17,379	11,094	78.6	Adopted
2. Amendment to elect representatives to state legislature from small districts in each county of approximately 1,500 voters each. Now elected at large from counties by fixed number, from 1 to 6,	15,731	17,921	2,190	57.7	Reject'd
3. Amendment for "local option" to displace state-wide prohibition,	13,377	29,934	16,557	74.3	Reject'd
4. Amendment for a workmen's compensation law. (Note (?) supported by organized labor),	18,061	21,255	3,194	67.5	Reject'd
5. Amendment abolishing capital punishment,	18,936	18,784	152	65.0	Adopted
7. Statute creating department of labor and board of arbitration to act with commissioner of labor,	13,798	21,492	7,694	58.8	Reject'd
8. Statute creating office of state architect,	10,010	25,960	15,950	62.0	Reject'd
9. Statute protecting wild game and fixing game season, etc.,	17,518	16,849	669	60.0	Adopted

	Yes.	No.	Majority.	% Vote.	Result.
10. Statute increasing causes of divorce, ...	13,564	18,097	4,533	54.3	Reject'd
By referendum petition: NONE.					
By the legislature:					
1. Amendment to require a majority of all votes cast necessary to enact any measure submitted by initiative or referendum petition, ...	18,356	18,961	605	64.2	Reject'd
2. Amendment raising the tax exemption limit on property of widows, ...	14,296	16,882	2,586	53.4	Reject'd

Highest percent of vote cast on any question, ... 97.6
Lowest percent of vote cast on any question, ... 76.8
Average percent of vote cast on all questions, ... 87.6

ARKANSAS.

General Election, November 7, 1916.

Total Vote for Governor, 167,505.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Improved direct primary and state election law, ...	93,745	48,033	45,712	84.6	Adopted
2. Local option law to displace statutory state-wide prohibition. Initiated by liquor interests, ...	58,278	105,279	47,001	97.6	Reject'd
3. Amendment permitting legislature to authorize school districts by vote to increase limit of school debt, ...	108,892	48,579	60,313	94.0	Adopted
4. Improved initiative and referendum amendment, ...	68,721	73,962	5,241	85.2	Reject'd
By referendum petition: NONE.					
By the legislature:					
1. Amendment permitting county courts to levy 3-mill road tax,	82,503	66,150	16,353	76.8	Reject'd

NOTE:—Constitution amendments require majority of "all votes cast" for adoption.
Highest percent of vote cast on any question, ... 97.6
Lowest percent of vote cast on any question, ... 76.8
Average per cent of vote cast on all questions, ... 87.6

CALIFORNIA.

General Election, November 7, 1916.

Total Ballots Cast, 1,045,858.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Amendment prohibiting any member of legislature from holding any other civil office of profit under the State during his term of office, ...	414,208	230,260	183,948	61.6	Adopted

	Yes.	No.	Majority.	% Vote.	Result.
2. Amendment prohibiting manufacture or sale of intoxicating liquors, to take effect 192—,	436,639	538,200	101,561	93.2	Reject'd
3. Amendment for partial prohibition; abolishes saloons; permits importation to individuals at residence only in 2 gallon lots, or more, permits manufacture and export of wines, etc.,	461,039	505,783	44,744	92.5	Reject'd
4. Amendment for single tax on land values,	260,332	576,533	316,201	80.0	Reject'd
By referendum petition:					
1. Amendment act to primary law permitting voters to declare party affiliation on election day instead of at the time of registration,	319,559	349,723	30,164	63.9	Reject'd
By the legislature:					
1. Bond issue of $15,000,000 for completion of state highway system,	542,239	137,107	405,132	64.8	Adopted
2. Act amending the state highway law of 1909 empowering the state advisory engineering board to equalize among counties the interest burden of highway bonds,	483,151	152,910	330,241	60.8	Adopted

Highest percent of vote cast on any question, ... 93.2
Lowest percent of vote cast on any question, ... 60.8
Average percent of vote cast on all questions, ... 73.8

COLORADO.

General Election, November 7, 1916.

Total Vote for Governor, 285,215.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Amendment for civil service,	62,458	96,561	34,103	55.7	Reject'd
2. Amendment declaring beer a non-intoxicating liquor and permitting its manufacture and sale (State had prohibition),	77,345	163,134	89,789	84.3	Reject'd
3. Statute guaranteeing state care for insane. Board of corrections forbidden to reject, or limit number,	164,220	39,415	124,805	71.4	Adopted
4. Statute abolishing state tax commission and transferring its powers and duties to the state board of equalization,	80,362	84,011	3,649	56.2	Reject'd
5. Statute to prohibit stock running at large,	85,279	155,134	69,855	84.3	Rejectd'
6. Statute permitting investment of school funds in public securities or unincumbered farm land. Formerly held in banks only,	102,596	66,058	36,898	62.0	Adopted
By referendum petition:					
1. Statute establishing a state medical board,	96,879	82,317	14,562	65.7	Adopted
By the legislature:					
1. Resolution proposing convention to revise state constitution,	53,530	69,579	16,049	39.6	Reject'd

Highest percent of vote cast on any question, ... 84.3
Lowest percent of vote cast on any question, ... 39.6
Average percent of vote cast on all questions, ... 64.9

MAINE

State Election, September 11, 1916.

Total Vote for Governor, 150,843.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition: NONE.					
By referendum petition:					
1. Statute limiting the number of hours of employment of women and children to 54 hours in one week, ...	95,591	40,252	55,339	89.3	Adopted
By the legislature:					
1. Statute providing for state and county aid in building highway bridges, ...	96,677	14,138	82,439	66.8	Adopted

Highest percent of vote cast on any question, ... 89.3
Lowest percent of vote cast on any question, ... 66.8
Average percent of vote cast on all questions, ... 78.1

MICHIGAN.

General Election, November 7, 1916.

Total Vote for Governor, 651,519.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Amendment for state-wide prohibition, ...	353,378	284,754	68,624	97.7	Adopted
2. Amendment for local option (liquor) with townships and municipalities as units, ...	256,272	378,871	122,599	97.5	Reject'd
3. Amendment permitting organization of fraternal insurance societies without compulsory lodge ritual and requiring democratic form of government for fraternal insurance organizations, ...	225,220	349,810	124,590	87.9	Reject'd
By referendum petition: NONE.					
By the legislature:					
1. Amendment permitting legislature to repeal local or special acts passed prior to 1909, without vote of districts affected, ...	283,823	275,701	8,122	85.8	Adopted

Highest percent of vote cast on any question, ... 97.7
Lowest percent of vote cast on any question, ... 85.8
Average percent of vote cast on all questions, ... 92.2

MISSOURI.

General Election, November 7, 1916.

Total Vote for Governor, 785,998.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Amendment creating a state land bank for rural credits system, $1,000,000 appropriation for same, .	296,964	346,443	49,479	81.8	Reject'd
2. Amendment for state-wide prohibition, ...	294,288	416,826	122,538	90.5	Reject'd
By referendum petition: NONE.					
By the legislature:					
1. Amendment empowering the legislature to pension the deserving blind, ...	385,627	272,908	112,719	83.8	Adopted

Highest percent of vote cast on any question, ... 90.5
Lowest percent of vote cast on any question, ... 81.8
Average percent of vote cast on all questions, ... 85.4

MONTANA.

General Election, November 7, 1916.

Total Vote for Governor, 173,572.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Statute permitting boxing contests under certain regulations, ...	72,162	76,510	4,348	85.6	Reject'd
By referendum petition: NONE.					
By the legislature:	Yes.	No.	Majority.	% Vote.	Result.
1 Amendment providing for state and county boards of tax equilization, ...	74,257	60,839	14,318	77.8	Adopted
2. Amendment exempting all church property from taxation (present law exempts all actually used for church services)....	48,656	83,198	34,542	76.9	Reject'd
3. Amendment for bond issue of $265,000 for state twine factory, ...	68,059	79,158	11,099	84.8	Reject'd
4. Amendment for state-wide prohibition, ...	102,776	73,890	28,886	101.7	Adopted

NEBRASKA.

General Election, November 7, 1916.

Total Vote for Governor, 302,685.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Amendment for state-wide prohibition, ...	146,574	117,132	29,242	87.1	Adopted
2. Amendment to create office of state food, dairy, drug and oil commissioner. Abolishes the present commission and transfers powers, ...	91,215	105,993	14,778	65.6	Reject'd
By referendum petition:					
NONE.					
By the legislature:					
NONE.					

Highest percent of vote cast on any question,.... 87.1
Lowest percent of vote cast on any questioqn,.... 65.6
Average percent of vote cast on all questions,.... 76.4

NORTH DAKOTA.

General Election, November 7, 1916.

Total Vote for Governor, 110,631.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
NONE.					
By referendum petition:					
1. Statute prohibiting any person to sell, buy, or import liquor in state, as principal or agent, except certain persons authorized by law (defines bootlegging), ...	51,673	42,956	8,717	85.5	Adopted
2. Statute for repeal of mill tax for terminal elevators, ...	51,889	47,035	4,854	89.4	Adopted
By the legislature:					
1. Amendment for establishing state normal schools, ...	60,582	43,434	17,248	94.0	Adopted
2. Amendment for location of state hospital for the insane, ...	49,001	44,356	4,645	93.4	Adopted

Highest percent of vote cast on any question,.... 94.0
Lowest percent of vote cast on any question,.... 85.5
Average percent of vote cast on all questions,.... 90.6

OKLAHOMA.

Primary Election, August 1, 1916.

Total Vote for Justice Supreme Court, 288,111.

By initiative petition:

	Yes.	No.	Majority.	% Vote.	Result.
1. Amendment abolishing state board of equalization and creating a state tax commission, ...	50,656	146,130	85,474	68.3	Reject'd
2. Amendment reducing salary of clerk of supreme court, ...	58,933	134,963	75,970	67.4	Reject'd
3. Amendment limiting expenditure by municipalities, etc., for publicly owned utilities to 10% of assessed valuation, and requiring vote of 3-5 of taxpaying voters, ...	44 687	147,933	103,246	66.8	Reject'd
4. Amendment to permit enactment of compulsory compensation law, ...	50,995	139,132	68,137	65.9	Reject'd
5. Amendment to consolidate criminal court of appeals with supreme court and create an additional justice, ...	42,896	149,272	108,376	66.7	Reject'd
6. Amendment reducing number of jurors requiring save in capital cases—to 6 or 8, etc., ...	49,954	142,333	92,379	66.7	Reject'd
7. Amendment abolishing county courts and vesting their jurisdiction in district courts, ...	47,194	157,284	110,090	70.9	Reject'd
8. Amendment requiring that corporations pay school taxes proportionate to other property and that the money be deposited with the state (not local) school funds be proportionately distributed in the State, ...	76,095	127,525	51,430	70.7	Reject'd
9. Amendment for literary test "grandfather clause,"	90,605	133,140	42,535	77.6	Reject'd

OKLAHOMA.

General Election, November 7, 1916.

Total Vote for President, 304,106.

By initiative petition:

	Yes.	No.	Majority.	% Vote.	Result.
1. Amendment election law especially provided for non-partisan election boards, ...	147,067	119,062	27,465	92.5	Reject'd
2. Amendment for new registration system, ...	140,366	114,824	25,542	88.5	Reject'd

Constitutional requirements of "all votes cast" not received. Case is contested in courts.

By referendum petition:
NONE.

By the legislature:
NONE.

Highest percent of vote east on any question,.... 92.5
Lowest percent of vote cast on any question,.... 65.9
Average percent of vote cast on all questions,.... 72.9

OREGON.

General Election, November 7, 1916.

Total Vote for President, 261,650.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Amendment for single tax on land values, ...	43,390	154,980	111,590	75.8	Reject'd
2. Amendment for locating new state normal school at Pendelton and appropriating $125,000 therefor, ...	96,829	109,523	12,694	78.9	Reject'd
3. Amendment providing for manufacturing and sale of 40%malt liquors, ...	85,973	140,599	54,626	86.6	Reject'd
4. Amendment forbidding importation of intoxicating liquors for beverage purposes, ...	114,932	109,671	5,261	85.8	Adopted
5. Amendment to establish state rural credit system, ...	107,488	83,887	23,601	73.1	Adopted
6. Amendment to limit state, county and municipal tax and bonding power to 6% annual increase, ...	99,536	84,031	15,505	70.2	Adopted
7. Statute repealing the Sunday closing law, ...	125,836	99,076	32,760	83.3	Adopted
8. Statute to abolish compulsory vaccination, ...	99,745	100,199	454	78.4	Reject'd
By referendum petition: NONE.					
By the legislature:					
1. Amendment permitting governor to veto single items in appropriation bills, ...	141,773	83,207	88,566	74.6	Adopted
2. Amendment exempting ships from taxation except by the state for state purposes, ...	119,652	65,410	54,242	70.7	Adopted
3. Amendment removing from constitution discrimination against right of negroes and mulattoes to vote, ...	100,027	100,701	674	76.7	Reject'd

Highest percent of vote cast on any question, ... 86.6
Lowest percent of vote cast on any question, ... 70.2
Average percent of vote cast on all questions, .. 77.3

SOUTH DAKOTA.

General Election, November 7, 1916.

Total Vote for Governor, 128,500.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Statute to repeal a direct primary law enacted by the legislature of 1915 and substitute the "Richards Primary Law" of 1912 with some changes, ...	52,410	52,733	323	82.1	Reject'd

	Yes.	No.	Majority.	% Vote.	Result.
2. Statute amending local option liquor law to require absolute majority of voters of any city or township to authorize license, instead of the vote cast "on the question," and permitting only "freeholders" to sign petitions, ...	49,174	54,422	5,248	81.4	Reject'd
3. Statute initiated by the bankers to repeal present guarantee law and substitute their own, ...	47,715	52,205	4,490	77.7	Reject'd
4. Statute initiated by administration Democrats to repeal present bank guarantee law and substitute another differing from proposed "bankers' act, ...	47,925	50,226	2,301	76.7	Reject'd
5. Statute authorizing verdict in civil cases by 10 out of 12 jurors, ...	49,601	51,529	1,908	77.9	Reject'd
By referendum petition: NONE.					
By the legislature:					
1. Amendment permitting state to construct good roads and mine and sell coal from state lands to citizens. Requires 2-3 vote of legislature for law, ...	75,922	33,521	42,401	85.4	Adopted
2. Amendment permitting irrigation projects at expenses of land irrigated, ...	58,775	44,238	14,537	80.4	Adopted
3. Amendment permitting legislature to classify property for taxations, otherwise increasing power of legislature over taxation, ...	55,568	43,793	11,775	77.3	Adopted
4. Amendment permitting establishment of state or county rural credit systems, ...	57,569	41,957	15,612	85.5	Adopted
5. Resolution for a convention to revise state constitution, ...	56,432	35,377	21,055	71.5	Reject'd
6. Amendment to grant suffrage to women, ...	53,432	58,350	4,918	87.3	Reject'd
7. Amendment for state-wide prohibition, ...	65,334	53,380	11,954	92.4	Adopted
8. Amendment permitting leasing of school lands longer than the present 5-year limit, ...	41,379	61,798	20,419	80.5	Reject'd
9. Amendment permitting legislature by a two-thirds vote to fix salaries of state officers. Now fixed by constitution, ..	39,169	61,223	22,054	78.2	Reject'd

Highest percent of vote cast on any question,.... 92.4
Lowest percent of vote cast on any question,.... 71.5
Average percent of vote cast on all questions,.... 81.2

WASHINGTON.

General Election, November 7, 1916.

Total Vote for Governor, 377,602.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1 Statute authorizing manufacture, sale and export of 4 per cent. beer. In lieu of present prohibition, ...	98,843	245,399	146,556	91.9	Reject'd

	Yes.	No.	Majority.	% Vote.	Result.
2. Statute permitting sale of liquor in hotels and restaurants; also for manufacture of beer and direct sale to home consumers,	48,354	263,390	215,036	85.1	Reject'd
By referendum petition:					
1. Law prohibiting circulation of initiative and referendum petitions and requiring that petitions be signed at office of registration offices only, ...	62,117	196,363	134,246	68.4	Reject'd
2. Law imposing above restrictions on recall petitions, ...	63,646	193,686	130,040	68.1	Reject'd
3. Law crippling direct primary and re-establishing county and state party convention system,	49,370	200,499	151,129	66.1	Reject'd
4. Law prohibiting and penalizing picketing in industrial strikes,	85,672	183,042	97,370	71.1	Reject'd
5. Law that no "new public utility" could be started except by a "certificate of public necessity and convenience" from the state public service commission Anti-municipal ownership, ..	46,820	201,742	154,922	65.8	Reject'd
6. Law seriously crippling the Seattle publicly owned port, a $7,000,000 institution, ...	45,264	195,253	149,989	63.6	Reject'd
7. Law for budget system. State and local. Violated home-rule principle for municipalities, ..	67,205	181,833	124,628	65.9	Reject'd
By the legislature:					
1. Amendment that taxpayers only be permitted to vote on bond issues, or fiscal questions, ..	88,963	180,179	91,216	71.0	Reject'd

Highest percent of vote cast on any question, ... 91.9
Lowest percent of vote cast on any question, ... 63.6
Average percent of vote cast on all questions, ... 71.5

SPECIAL ELECTION OF 1917.

MAINE.

Special Election, September 10, 1917.

By Order of the Legislature. For Measures Only.

Highest Vote on Any Measure, 59,442.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition: NONE.					
By referendum petition: NONE.					
By the legislature:					
1. Amendment, elections—polling districts, ...	22,588	24,593	2,005	79	Reject'd
2. Amendment, legislature—apportionment, ...	22,013	21,719	294	73	Adopted
3. Amendment, militia—appointment of officers, ...	20,585	23,912	2,931	74	Reject'd
4. Amendment, removal of sheriff,	29,584	25,416	4,168	92	Adopted
5. Amendment, woman suffrage, .	20,604	38,838	18,234	100	Reject'd

NEW MEXICO.

Special Election, November, 1917.

By Order of the Legislature. For Measures Only.

Highest Vote on Any Measure, 40,869.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition: (The constitution has no initiative.)					
By referendum petition: NONE.					
(Requirements practically impossible of operation.)			.....		
By the legislature:					
1. Amendment, judicial districts created, ...	16,822	22,036	5,214	95	Reject'd
2. Amendment, state prohibition,	28,732	12,137	16,595	100	Adopted
3. Amendment, taxation, limitation of tax rate, ...	14,107	25,077	10,970	96	Rejectd

OHIO.

Special Election, November 6, 1917.

By Order of the Legislature. For Measures Only.

Highest Vote on Any Measure, 1,046,317.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Amendment for state-wide prohibition, ...	522,590	423,727	1,137	100	Reject'd
By referendum petition:					
1. Statute granting presidential suffrage to women, ...	417,517	563,146	145,629	94	Reject'd
By the legislature: NONE.					

OREGON.

Special Election, June 4, 1917.

By Order of the Legislature. For Measures Only.

Highest Vote on Any Measure, 141,119.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition: NONE.					
By referendum petition: NONE.					
By the legislature:					
1. Amendment limiting number of bills introduced and increasing pay of the legislators, ...	22,276	103,238	80,962	89	Reject'd

	Yes.	No.	Majority.	% Vote.	Result.
2. Amendment declaring against implied repeal of provisions of the constitution by amendments thereto. (Ambiguous. Hostile to initiative and referendum), ...	37,187	72,445	35,258	77	Rejeet'd
3. Amendment for uniform taxation of property of the same class, ...	62,118	53,245	8,873	82	Adopted
4. Amendment requiring election of city and state offieers at the same time, ...	83,630	42,296	41,334	89	Adopted
5. Statute authorizing state bond issue of $6,000,000 for roads,	77,316	63,803	13,513	100	Adopted
6. Statute authorizing ports to create indebtedness to buy ships, etc., ...	67,445	54,864	12,581	86	Adopted
7. Statute, tax levy of $4,000,000 for new penitentiary, ...	46,666	86,165	39,499	94	Rejeet'd

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GENERAL ELECTIONS OF 1918.

I. STATUS.

Thirteen states made use of the initiative and referendum in this election.

Four states had the initiative and referendum, but did not use them. (Maine, Miehigan, Mississippi and Nebraska.)

Two states had the referendum only, but did not use it. (Maryland and New Mexieo.)

II. NUMBER OF MEASURES SUBMITTED.

By initiative petitions, ...	36	
By referendum petitions, ...	5	
Total by initiative and referendum petitions, ... (An average of three to eaeh state using.)		41
By the legislatures (16 states), ...		58
Grand total, ...		99

III. ADOPTION AND REJECTION OF MEASURES.

	Adopted.	Rejeeted.	Totals.
Proposed by initiative petition, ...	24	12	36
Proposed by referendum petition, ...	1	4	5
Submitted by state legislatures, ...	35	23	58
Totals, ...	60	39	99

IV. THE VOTE CAST UPON MEASURES.

(As eompared with vote for eandidates in same eleetions.)

Average percent of vote east upon highest measures, all states, ...	80
Average perecnt of vote east upon lowest measures, ...	66
Average percent of vote east upon all measures, ...	72

ARIZONA.

General Election, November 5, 1918.

Total Vote for Governor, 51,959.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Amendment for new workmen's compensation act, ...	12,873	27,177	14,304	77	Reject'd
2. Amendment dividing counties into legislative districts for purpose of representation in lower house of state legislature according to population instead of geographically, giving one representative to each district, ...	17,564	10,688	6,876	54	Adopted
3. Amendment authorizing legislature to enact laws for sale or release of state lands (includes school lands), ...	16,372	10,867	5,565	54	Adopted
4. Amendment limiting sale of agricultural lands to 160 acres and of grazing land to 640 acres, ...	14,379	11,179	3,200	50	Adopted
5. Statute for capital punishment,	20,443	10,602	9,841	60	Adopted
6. Statute prohibiting vaccination of minor children without consent of guardian, ...	16,941	16,411	3,530	59	Adopted
7. Statute providing that all applications for lease of state lands should be on forms by land commissioner, and filed and sworn to, ...	10,239	10,975	736	41	Reject'd
By referendum petition:					
1. Act abolishing gambling places,	10,736	10,066	670	40	Adopted
2. Act prohibiting use of buildings for houses of prostitution, ...	19,102	8,990	10,112	54	Adopted
By the legislature:					
1. Act to re-establish contract system of doing state work and repeal act establishing state bank and state printing plant.	13,297	11,658	1,639	49	Adopted

ARKANSAS.

General Election, November 5, 1918.

Total Vote for Governor, 78,100.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Amendment raising city debt,..	25,059	24,191	868	63	Reject'd
By referendum petition:					
NONE.					
By the legislature:					
1. Amendment permitting supreme court to sit in divisions and increase number from 3 to 7,	20,721	28,888	8,167	64	Reject'd
2. Amendment providing bond issue for farm credit fund in regulating rural credit loan,.	22,741	27,571	4,830	64	Reject'd

(Note: Requires majority "All votes cast.")

Special Election, December 14, 1918.

Order by the Constitutional Convention.

	Yes.	No.	Majority.	% Vote.	Result.
1. Proposed new constitution, .. (Light vote. compare with vote cast for governor above.)	23,820	37,184	13,364	..	Reject'd

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CALIFORNIA.

General Election, November 5, 1918.

Total Vote for Governor, 688,670.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Amendment for single tax, ...	118,088	360,334	242,246	69	Reject'd
2. Statute regulating liquor traffic.	256,778	341,897	85,119	87	Reject'd
3. Statute against usury, limits interest rate to 7% per annum, and in no case to exceed 12%,	231,147	212,207	18,940	65	Adopted
4. Statute limiting yearly increase in county tax to 5% of total previous year. Applies also to school tax, ...	167,049	227,953	60,904	58	Reject'd
5. Statute amending dental act to permit any person to get license from state board after five years practice and payment of $25, ...	200,475	314,713	114,238	75	Reject'd
6. Statute prohibiting liquor traffic after Dec. 31, 1918, ...	275,643	306,488	30,845	85	Reject'd
By referendum petition:					
1. Act limiting county and school tax levies, ...	127,634	259,626	131,992	51	Reject'd
By the legislature:					
1. Amendment permitting legislation to fix conditions on which public monies may be deposited in banks, etc., ...	239,203	180,856	58,347	61	Adopted
2. Amendment for absent voting, Legislature to select method, .	189,845	252,387	62,542	65	Reject'd
3. Amendment permitting consolidation of city and county government, ...	195,998	183,610	12,388	51	Adopted
4. Amendment making the creation and changing of state courts a legislative instead of a constitutional matter, ...	86,123	274,231	188,108	51	Reject'd
5. Amendment permitting Los Angeles county by vote to levy tax to replenish public funds insufficient for original purpose voted, ...	183,994	178,970	5,024	50	Adopted
6. Amendment giving alumni of state university representation on governing board, and granting board freedom in detailed management of university, ...	249,886	148,305	101,581	51	Adopted
7. Amendment creating two additional divisions of the district courts of appeal to sit in San Francisco and Los Angeles, ..	188,243	169,803	18,840	52	Adopted

	Yes.	No.	Majority.	% Vote.	Result.
8. Amendment providing that when a borough is once established in a consolidated city and county government, no boundary change may be made except by popular vote, ...	179,627	171,735	7,892	51	Adopted
9. Amendment exempting cemetaries from taxation, ...	170,296	302,325	132,029	69	Reject'd
10. Amendment for state to reimburse cities for revenue losses through military service exemptions, ...	115,727	262,421	146,694	55	Reject'd
11. Amendment permitting state to proceed with work on a right of way before compensation had been fixed for private owner, ...	212,011	179,976	32,035	57	Adopted
12. Amendment exempting Y. M. C. A. and Y. W. C. A. property from taxation, ...	166,486	290,573	124,087	66	Reject'd
13. Amendment creating State budget board. Legislature has adopted budget system, ..	96,820	261,311	164,491	52	Reject'd
14. Amendment permitting City of Venice to vote $60,000 in excess of constitutional tax limit for emergency debts, ...	188,349	167,647	20,702	51	Adopted
15. Amendment authorizing legislature to establish health insurance system, ...	133,858	358,324	224,446	71	Reject'd
16. Amendment vesting the legislature with power to establish workmen's compensation system, ...	229,974	224,517	5,457	66	Adopted
17. Amendment permitting organization of corporations in which stockholder's liability is limited to amount of his investment, ...	178,355	196,948	18,593	55	Reject'd
18. Amendment allowing eminent domain proceedings to acquire more land than is actually needed for the purpose, ...	138,131	228,324	90,193	54	Reject'd
High.					
Low.					
Average.					

COLORADO.

General Election, November 5, 1918.

Total Vote for Governor, 220,339.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Amendment for classified civil service, ...	75,301	41,287	34,014	53	Adopted
2. Statute for relief of the adult blind, ...	131,469	9,440	122,029	64	Adopted
3. Statute for state-wide prohibition, ...	113,636	64,740	48,896	81	Adopted
By referendum petition: NONE.					
By the legislature:					
1. Amendment for publication of referred measures in two newspapers in each county,.	98,715	12,237	86,478	50	Adopted

	Yes.	No.	Majority.	% Vote.	Result.
2. Amending limiting the introduction in legislature to the first 15 days of session, ...	67,693	19,901	47,792	40	Adopted

High, ... 81%
Low, ... 40%
Average, ... 58%

MAINE.

State Election, 1917.

(No State Election in 1918.)

By initiative petition:
NONE.

By referendum petition:
NONE.

By the legislature:
(All amendments.)

	Yes.	No.	Majority.	% Vote.	Result.
1. Elections—Polling districts, ...	22,588	24,593	2,005		Reject'd
2. Legislature—Appointment, ...	22,013	21,719	294		Adopted
3. Militia—Appointment of officers, ...	20,585	23,912	2,931		Reject'd
4. Removal of sheriff, ...	29,584	25,416	4,168		Adopted
5. Woman suffrage, ...	20,604	38,838	18,234		Reject'd

MICHIGAN.

General Election, November 5, 1918.

Total Vote for Governor, 434,376.

By initiative petition:
NONE.

By referendum petition:
NONE.

By the legislature:

	Yes.	No.	Majority.	% Vote.	Result.
1. Amendment providing that all proposed amendments to the constitution be submitted on ballot instead of on separate ballots, ...	317,070	90,744	226,326	94	Adopted
2. Amendment for women suffrage, ...	229,790	195,281	34,509	98	Adopted

NOTE: State prohibition was adopted in a special election April, 1919.
Several amendments were submitted in 1917 by legislature (See Political Science Review for Aug. 1919.)

High, ... 98%
Low, ... 94%
Average, ... 96%

MARYLAND.

General Election, 1918.

Total Votes for Congressman, 160,074.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition: (State has no initiative)					
By referendum petition: NONE.					
By the legislature:					
1. Amendment for absent voting by soldiers and sailors, ...	81,494	19,099	62,395	63	Adopted

MISSOURI, 1918.

Total Vote for U. S. Senator, 577,706.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Amendment for establishing state homestead loan fund, ..	102,452	290,207	187,755	67	Reject'd
2. Amendment for single tax, ...	80,725	373,220	292,445	78	Reject'd
3. Home rule for cities, ...	95,197	280,839	185,642	65	Reject'd
By referendum petition: NONE.					
By the legislature:					
1. Amendment fixing tax limitations for local purposes, ...	90,637	297,118	206,481	67	Reject'd
2. Amendment concerning the public school fund, ...	93,392	289,269	145,877	66	Reject'd
3. Amendment affecting rate of road tax, ...	94,142	287,488	193,346	66	Reject'd
4. Amendment for 10% special tax for road fund, ...	81,610	293,101	211,591	64	Reject'd
5. Amendment permitting cities over 2000 and under 30,000 to lay special tax of 5% to build public utilities, ...	88,246	286,886	198,640	64	Reject'd
6. Amendment for state-wide prohibition, ...	223,618	297,582	73,964	90	Reject'd

High, ... 90%
Low, ... 64%
Average, ... 70%

MISSISSIPPI.

General Election, November 5, 1918.

Total Vote Cast for Governor, 54,601.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition: NONE.					
By referendum petition: NONE.					
By the legislature:					
1. Amendment to lower age qualification of governor, ...	4,193	24,872	20,680	53	Reject'd

	Yes.	No.	Majority.	% Vote.	Result.
2. Amendment — classification of property for taxation, ...	6,502	22,426	15,928	53	Rejected
3. Amendment opposing increase of supreme court pending; returns not received.					

MONTANA.

General Election, November 5, 1918.

Total Vote for U. S. Senator, 112,402.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Statute authorizing and regulating the practice of chiropractic in Montana, ...	46,302	39,320	7,082	76	Adopted
By referendum petition: NONE.					
By the legislature:					
1. Amendment(?) for terminal elevator bonds, ...	54,215	29,630	27,585	75	Adopted
2. Exemption of mortgages, ...	55,296	30,614	14,682	77	Adopted

High, ... 77%
Low, ... 75%
Average, ... 76%

NEBRASKA, 1918.

Total Vote for Governor, 222,175.

Total Ballots Cast, 225,717.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition: NONE.					
By referendum petition: NONE.					
By the legislature:					
1. Amendment for woman suffrage, ...	123,292	51,600	71,692	78	Adopted
2. Resolution for constitutional convention, ...	121,830	44,491	77,339	74	Adopted

NEVADA.

General Election, November 5, 1918.

Total Vote for U. S. Senator, 25,563.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Statute for prohibition, ...	13,248	9,060	4,188	87	Adopted
By referendum petition: NONE.					
By the legislature: NONE.					

NEW MEXICO.

Total Vote, 64,256.

State Election in 1917.

(No State Election in 1918.)

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition: (The constitution has no initiative.)					
By referendum petition: NONE. (Requirements practically impossible of operation.)					
By the legislature:					
1. Judicial districts created, ...	16,822	22,036	5,214	61	Reject'd
2. State prohibition, ...	28,732	12,137	16,595	64	Adopted
3. Taxation — Limiation of tax rate, ...	14,107	25,077	10,970	61	Reject'd

High, ... 64%
Low, ... 61%
Average, ... 62%

NORTH DAKOTA.

General Election, November 5, 1918.

Total Vote for Governor, 94,055.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Amendment for a new initiative and referendum substitute amendment applying to statutes, ...	47,447	32,598	14,849	85	Adopted
2. Amendment regulating use of emergency by legislature as applied to initiative and referendum, ...	46,121	32,507	13,614	84	Adopted
3. Amendment regulating submission of constitutional amendments by legislature, and creating new form of constitutional initiative, ...	46,329	33,572	12,757	85	Adopted
4. Amendment empowering legislature to exempt personal property, buildings and improvements from taxation, ...	46,833	33,921	12,912	86	Adopted
5. Amendment empowering legislature to create state hail insurance system, and levy tax for same, ...	49,878	31,586	18,292	87	Adopted
6. Amendment raising the debt limit of the State from $200,000, providing that guarantee bonds should not be issued on state owned utilities in excess of $10,000,000, ...	46,275	34,335	12,040	86	Adopted

	Yes.	No.	Majority.	% Vote.	Result.
7. Amendment allowing state, or any city or county, to engage in publicly owned enterprises,	46,830	34,575	14,256	87	Adopted
By referendum petition: NONE.					
By the legislature:					
1. Amendment limiting voting power in stock-holders in co-operative corporations, ...	49,392	32,053	17,339	87	Adopted
2. Amendment empowering legislature to levy tax upon land to create hail insurance fund,...	52,475	30,257	21,218	88	Adopted
3. Amendment that no law shall be declared unconstitutional by supreme court unless four judges out of 5 so decide, ...	52,687	28,846	13,841	87	Adopted
High, ...				88%	
Low, ...				84%	
Average, ...				86%	

OHIO.

General Election, November 5, 1918.

Total Vote for Governor, 960,862.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Amendment applying referendum to action of legislature upon supposed amendment to the constitution of the United States, ...	508,282	315,030	193,252	86	Adopted
2. Amendment—State-wide prohibition, ...	463,654	437,895	25,759	94	Adopted
3. Amendment empowering legislature to classify property for purposes of taxation, ...	336,616	304,399	32,217	67	Adopted
By referendum petition: NONE.					
By the legislature:					
1. Amendment empowering legislature to enact laws providing against double taxation as of real estate and a mortgage thereon, ...	479,420	371,176	108,244	89	Adopted
High, ...				94%	
Low, ...				67%	
Average, ...				84%	

OKLAHOMA.

General Election, November 5, 1918.

Total Vote at the Election, 194,435.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition: NONE.					
By referendum petition: NONE.					
By the legislature:					
1. Amendment for woman suffrage,	106,845	81,389	25,456	97	Adopted

OREGON.

General Election, November 5, 1918.

Total Vote for Governor, 152,991.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Statute abolishing newspaper advertisement of delinquent taxes, and substituting method by which tax collector shall notify real estate owners by mail,	66,652	41,594	25,058	71	Adopted
2. Statute requiring the amount paid for legal advertising to be stated on such advertising in newspapers,	50,073	41,816	8,257	60	Adopted
3. Statute initiated by state tax commission authorizing increase in state tax levy for 1919,	41,364	56,974	15,610	65	Reject'd
By referendum petition:					
1. Statute prohibiting seine and set-net in Rogue River and tributaries,	45,511	50,227	4,716	63	Reject'd
2. Statute closing the Williamette River to commercial fishing south of Oswego,	55,555	40,908	14,647	63	Adopted
By the legislature:					
1. Amendment appropriating $125,000 for Southern Oregon Normal College at Ashland, and $125,000 for Eastern Normal,	49,935	66,070	16,135	76	Reject'd
2. Act appropriating $2000,000 to establish home for dependent, delinquent and defective children near Portland,	43,441	65,299	11,858	71	Reject'd

High, ... 76%
Low, ... 60%
Average, ... 67%

SOUTH DAKOTA.

General Election, November 5, 1918.

Total Votes Cast for Governor, 94,867.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Statute — Richard's Election law,	47,981	34,705	13,276	96	Adopted
By referendum petition: NONE.					
By the legislature:					
1. Amendment for tax reform,	50,970	25,047	25,923	71	Adopted
2. Amendment providing disqualifications for supreme court judges,	41,646	24,798	16,848	69	Adopted
3. Amendment—Sale of school lands,	45,809	21,855	23,954	71	Adopted
4. Amendment—Increase of officers' salaries,	26,784	42,799	16,015	92	Reject'd
5. Amendment—Woman's suffrage,	49,318	29,934	20,384	81	Adopted
6. Amendment—State coal mines,	40,632	25,922	14,710	68	Adopted
7. Amendment—State to engage in internal improvements,	42,097	24,424	17,673	70	Adopted
8. Amendment—State to develop resources,	34,821	27,886	6,935	64	Adopted
9. Amendment—State to develop water power,	41,658	24,429	17,229	68	Adopted
10. Sale of cement products,	38,108	25,702	12,406	66	Adopted
11. Amendment—Hail insurance on crops,	41,162	25,896	15,266	70	Adopted
12. Amendment—State owned elevators,	41,292	25,545	15,747	69	Adopted

High, ... 86%
Low, ... 64%
Average, ... 72%

UTAH, 1918.

Total Votes Cast, 137,820.

	Yes.	No.	Majority.	% Vote.	Result.
No initiative.					
No referendum.					
By the legislature:					
1. State-wide prohibition,	42,691	15,780	26,911	44	Adopted
2. Taxation—Mine assessments,	35,337	21,436	13,901	42	Adopted
3. Taxation—Exemption of homes, homesteads, and personal property,	38,699	12,880	25,819	40	Adopted

High, ... 44%
Low, ... 40%
Average, ... 42%

WASHINGTON.

General Election, 1918.

Total Ballots Cast, 215,684.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition: NONE.					
By referendum petition:					
1. Road bonds,	96,100	54,322	1,778	70	Adopted
By the legislature:					
1. Resolution proposing constitutional convention,	55,148	58,713	3,565	53	Reject'd
2. Act appropriating $30,000,000 bonds for improvement of state roads,	96,100	54,322	1,778	70	Adopted

High,	70%
Low,	53%
Average,	64%

SPECIAL AND GENERAL ELECTIONS OF 1919.

I. STATUS.

Eleven "I. and R." states held no elections of any character.

Two states held elections for candidates. The I. and R. was used in one.

Five held special elections called by the legislature or governor. The I. and R. was used in two.

II. NUMBER OF MEASURES SUBMITTED.

By initiative petitions,	3	
By referendum petitions,	10	
Total by initiative and referendum petitions (4 states),		13
By the legislatures (6 states),		19
Grand total,		32

III. ADOPTION AND REJECTION OF MEASURES.

	Adopted.	Rejected.	Totals.
Proposed by initiative petition,	0	3	3
Proposed by referendum petition,	8	2	10
Proposed by state legislatures,	12	7	19
Totals,	20	12	32

IV. VOTE CAST UPON MEASURES.

(a) As compared with the vote cast for candidates in the same election.

(Massachusetts and Michigan.)

Average percent of vote cast on highest measures,	92
Average percent of vote cast on lowest measures,	79
Average percent of vote cast on all measures,	85

(b) As compared with the total number of ballots cast in elections at which measures only were voted upon.

Average percent of vote cast on highest measures,	100
Average percent of vote cast on lowest measures,	90
Average percent of vote cast on all measures,	95

MAINE.

Special Election, November 8, 1919.

No. Candidates Voted Upon.

Highest Total Vote on Any One Measure, 31,353.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition: NONE.					
By referendum petition: NONE.					
By the legislature:					
1. Amendment empowering governor to appoint all commissioned officers of the state militia and also adjutant general. (Previously the commissioned officers were elected by the militia and the adjutant general by the legislature in joint session, ...	15,826	11,020	4,806	71	Adopted
2. Amendment permitting elector to vote in his original home precinct three months after removal to another precinct. ..	22,024	6,751	15,273	94	Adopted
3. Amendment authorizing legislature to issue bonds not to exceed $1,150,000 to maintain public wharves and establish adequate port facilities. Credit of state cannot be loaned, ..	22,637	6,777	15,860	93	Adopted
4. Amendment raising state debt limit from $300,000 to $800,000, ...	21,542	7,080	14,462	91	Adopted
5. Amendment increasing amount of state bonds which may be issued for state highways and bridges from $2,000,000 to $10,000,000, ...	26,228	5,125	21,163	100	Adopted

MASSACHUSETTS.

General Election, November 4, 1919.

Total Vote for Governor, 521,491.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition: NONE.					
By referendum petition:					
1. In January of 1919 the legislature passed an act (Chapter 116) prohibiting the payment of interest on savings bank					

	Yes.	No.	Majority.	% Vote.	Result.
deposits of trust companies oftener than semi-annually and from moneys which had been on deposit for the preceding six months. This was promoted by conservative banking interests to head off the practice starting among progressive bankers to pay interest on money on deposit less than six months and pay it monthly if desired. On April 28th a referendum petition was filed against this act by the progressive banking interests. The legislature on July 18, 1919, reversed its former action, permitting payments of interest according to the by-laws of the individual bank, from one to six months, and the people at the election approved the latter act of the legislature by the following vote, ...	257,136	110,412	46,724	75	Adopted
By the constitutional convention:					
1. Rearrangement of the constitution as prepared by the constitutional convention, ...	263,359	64,987	198,372	63	Adopted

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MICHIGAN.

Regular Election, April 7, 1919.

For Election of Members Supreme Court, Regents of State University, Superintendent of Public Instruction, State Board of Education, State Board of Agriculture.
Vote for Governor, 1916, 651,519.

Total Vote 1919 Election for Members of Supreme Court, 780,733.
Women Voted in 1919.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Amendment relative to importation of buying and selling of beer and light wines, etc., ..	322,603	530,123	207,520	109	Defeat'd
By referendum petition: NONE.					
By the legislature:					
1. Amendment authorizing state to issue bonds for highways, ...	558,572	225,239	333,333	100	Adopted
2. Amendment relative to increase or decrease of salaries of public officers, ...	313,539	418,778	105,239	94	Defeat'd

NORTH DAKOTA.

Special Election, June 26, 1919.

Referendum Measures Only Ordered by the Governor.

Total Ballots Cast, 111,814.

Vote for President, Election 1918, 108,677.

	Yes.	No.	Majority.	% Vote.	Result.
By referendum petition:					
1. Statute creating state printing commission, directing that one paper in each county shall be selected for official advertising purposes, ...	59,364	52,450	6,814	100	Adopted
2. Statute creating a board of administration to supervise all educational, charitable, and penal institutions of state, ..	59,749	51,894	8,855	99.8	Adopted
3. Statute creating one man tax commission, and granting ample power, ...	60,412	50,316	10,096	99	Adopted
4. Statute creating commissioner of immigration; main purpose to advertise resources and advantages of state, ...	59,421	52,156	7,265	99.8	Adopted
5. Act creating industrial commission; centralized body to conduct and manage state utilities, ...	61,188	50,271	10,917	99.7	Adopted
6. Act creating larger number of district judges; state dividend in six districts, ...	60,343	49,925	10,418	98.7	Adopted
7. Statutes creating state Bank of North Dakota, ...	61,495	48,239	13,256	98	Adopted

OHIO.

Special Election, November 4, 1919.

Highest Vote on Any Measure, 1,000,421.

Total Vote Governor, November 5, 1918, 960,862.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition:					
1. Defining the phrase "intoxicating liquor,"	474,907	504,688	29,781	98	Defeat'd
2. To repeal state-wide prohibition, ...	454,933	496,786	41,853	95	Defeat'd
By referendum petition:					
1. Ratifying national prohibition,	499,971	500,450	479	100	Defeat'd
2. To provide for state prohibition and its enforcement, ...	474,078	500,812	26,734	97	Defeat'd
By the legislature:					
1. Classification of property, ...	439,897	517,245	77,348	95	Defeat'd

OKLAHOMA.

Special Election, May, 1919.

Ordered by the State Legislature.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition: NONE.					
By referendum petition: NONE.					
By the legislature:					
1. Bond issue of $50,000,000 to begin a system of hard-surface roads for the state. The kind of roads and details were indefinite, ...	69,917	171,327	101,410	100	Defeat'd

OREGON.

Special Election, June 4, 1919.

Total Vote Cast, 90,877.

	Yes.	No.	Majority.	% Vote.	Result.
By initiative petition: NONE.					
By referendum petition: NONE.					
By the legislature:					
1. Amendment raising debt limitations counties from two to six per cent of assessed valuation,	49,728	33,561	16,167	92	Adopted
2. Amendment permitting legislature locate an industrial and reconstruction hospital outside seat of government, ...	38,204	40,707	2,503	87	Reject'd
3. Amendment permitting issue of state bonds for payment of interest on irrigation, bonds, and providing for repayment,	43,010	35,948	7,062	87	Adopted
4. Amendment for bonding of state for not more than $5,000,000 to promote reclamation in land settlement projects, ...	39,130	40,580	1,450	88	Reject'd
5. Amendment for election of a lieutenant governor, ...	32,653	46,861	14,208	37	Reject'd
6. Statute to appropriate $2,500,000 to be raised by sale of Roosevelt Coast Military bonds for building proposed Highway provided federal government appropriates same amount, ...	56,966	29,159	27,807	95	Adopted
7. Statute to bond state for $5,000,000 to construct various hospitals, educational buildings, armories, penitentiaries, and reclaim arid swamp and logged off lands for returned soldiers, ...	37,294	42,792	5,498	88	Reject'd

	Yes.	No.	Majority.	% Vote.	Result.
8. Statute providing honorable discharged soldiers, sailors, marines of state be provided not exceeding $200 per year expenses if attending any public or private educational institution in Oregon.	49,158	33,513	15,645	90	Adopted
9. Statute to levy annual tax of one mill on all property of state of regulating distribution upon counties.	53,191	28,039	15,052	90	Adopted

ILLINOIS.

Special Election, November 4, 1919.

For Election of Delegates to a Constitutional Convention.

Total vote unattainable. Estimated at around 50,000.

Illinois has no initiative or referendum. There is, however, a Public Opinion Law by which measures may be placed on the ballot to obtain an advisory vote of instructions to the legislature.

The following questions were placed on the ballot at the above election:

By initiative petition:

	Yes.	No.	Majority.	% Vote.	Result.
1. Shall the constitutional convention submit a proposal for the state wide and local initiative and referendum.	257,640	209,348	48,292	100	Adopted
2. Shall the convention submit the constitutional initiative in case No. 1 fails.	242,519	205,306	37,213	96	Adopted
3. Shall the convention submit an amendment making possible public ownership of public utilities, state or local.	257,753	197,135	60,618	97	Adopted

MEMORANDA AND BRIEFS No. 34.

EDUCATION—HIGHER—PROVISION FOR IN STATE.

Harrisburg, Pa., April 15, 1920.

Dr. Edgar Fahs Smith,

Chairman, Committee No. 5.

Dear Sir:

I understand you desire a brief on provisions for higher education in Pennsylvania.

I submitted a series of questions to Dr. Harlan Updegraff, Professor of Educational Administration, University of Pennsylvania.

The questions submitted to and answered by Dr. Updegraff were as follows:

I. How do the provisions for higher education in Pennsylvania compare with those in other states?

II. What are the considerations that should determine whether a state already having a well -establshed system of private and semi-private higher education should undertake the full control and major support of one or more such institutions?

III. How does this support of the principal higher educational institutions in Pennsylvania compare with that in other states?

IV. What are the factors that cause the large differences in income per student between the different higher educational institutions?

V. What amounts of endowment and of appropriations would have been needed in 1916 to have put the University of Pennsylvania on the same financial footing as Harvard University—and what would be the amounts required at present?

VI. What is the standard number of inhabitants for each higher educational institution?

VII. What is the wording of sections of constitutions of other states relating to universities?

I submit herewith Dr. Uudegraff's replies to these questions.

Very truly yours,

WM. DRAPER LEWIS,

Secretary.

REPLIES SUBMITTED BY DR. HARLAN UPDEGRAFF, PROFESSOR OF EDUCATIONAL ADMINISTRATION, UNIVERSITY OF PENNSYLVANIA.

QUESTION I.

How do the provisions for higher education in Pennsylvania compare with those in other states?

Very early in life of each state of the United States a college or university was placed at the head of its educational system. Because of the strong influence of the church in the control of those institutions established during early times, the colleges and universities of the east passed into the control of private hands when the separation between church and state occurred. The same fundamental attitude toward education that prompted the early colonists to establish colleges influenced the pioneers of the western states, but they established state colleges and universities to crown their public educational systems, not only because of the newly recognized principle of the separation of church and state, but also because of less homogeneity in society and of weakened influence upon the part of the church in the control of civil affairs. The fact that the Congress, at the time of the admission of each state, granted public lands (one or two townships) to a state university and began making grants to

state agricultural and mechanical colleges in 1862, abetted by the further fact that the settlers were poor and that the wealthier inhabitants of the east did not make endowments for church or private schools, also greatly promoted the founding and fostering of state higher educational institutions. So the typical situation as regards these institutions in the western states is one in which the state university (the agriculural and mechanical colleges sometimes an integral part of it and sometimes not) is the principal institution, while coexisting with it are a number of denominational colleges some excellent, other mediocre, while still others, because of lack of means, are so poor that they should be reduced to junior colleges or abolished altogether.

Through adequately supported and efficiently manned and equipped state universities, the western states assure themselves, not only of the proper educational advantages for their youth, but also of the assistance that experts in various fields of research can render the agricultural, industrial, commercial, political, educational and social activities of the commonwealth. The state universities through extension courses and other forms of service play a real and vital part in all phases of the lives of the people and the necessity for their active cooperation in all sorts of enterprises is felt not only in a vague theoretical way but also in a very real practical fashion. They are believed to be just as essential to social and personal welfare as the common schools.

Thus it has developed that in the east our chief higher educational institutions are privately supported and controlled, although they attempt to render, and to a large degree succeed in rendering, the same quality of public service as the western state universities. It is doubtful, however, whether the efforts in these directions are as numerous and as well sustained in the former group as in the latter. On the other hand, the former class of institutions has the advantage of the geographical extent to which its services go, for they serve every state in which opportunity offers, whereas the state institutions naturally are limited or limit themselves, somewhat at least, to the boundaries of the states in which they are located.

The system of higher education in Pennsylvania lies midway between these two. The commonwealth has her denominational colleges and in addition three large institutions that, while not state-controlled, have for many years been supported in part by public funds. They are the University of Pennsylvania, the University of Pittsburgh (formerly called Western University of Pennsylvania) and State College. In addition to these, two other colleges have in recent years received aid—Temple University and Duquesne College. The governor is ex-officio the President of the Board of Trustees of the University of Pennsylvania, although he has seldom served in that capacity. Approximately one-third of the trustees of State College are appointed by the governor, but the property of each of these institutions is in the name of a private corporation and the state has no means of exercising positive control over them. The only way in which the public could control the policy of any of these schools is through the cumbersome negative expedient of withholding appropriations or refusing to grant them altogether. The only other states in which is found a situation at all comparable to that in Pennsylvania and New York, Vermont and possibly New Jersey.

QUESTION II.

What are the consideration that should determine whether a state already having a well-established system of private and semi-public higher education should undertake the full control and major support of one or more such institutions?

One of the most important of such considerations may be expressed in the question: Do all the youth of the commonwealth have open to them, as equally as may be, opportunities for higher education? Another question is: Is the education given in the private institutions of such a character as to meet the needs of the youth and of the business, professional, educational and social interest of the people? Still another consideration is found in the question: Do the holders of private wealth seem inclined to endow a sufficient number of institutions with amounts that are adequate to make them effective instruments in society for the individual and social welfare? Still again, it should be asked; Do those who control such institutions have a proper conception of the public interests and are they guided solely by public interests in determining the policies of these institutions? It cannot be stated too strongly that higher education must be free to all or relatively so; must be adapted to meet adequately and efficiently the individual needs of those who wish to learn and must be serviceable to the public in working out the individual and social problems that are of importance to the welfare of the state. In case private control and private support are not fully meeting the needs, the state should, in the interests of its agriculture, industry and business and of its political, educational and social life. step in and make of some of its private universities, institutions that will truly and adequately serve the state, through the provision of ample support and broad-minded, sane, and democratic management.

QUESTION III.

How does the support of the principal higher educational institutions in Pennsylvania compare with that of other states?

In Table 1 are given the income during 1915-16, the last normal year before the world war, of three groups of institutions (1) the four leading private universities, (2) the two leading semi-public universities, and (3) the higher public educational institutions combined of eight states, the number of institutions so combined being shown in parenthesis after the name of each state. When there is more than one institution, it is due to the fact that the agricultural or other departments are separated from the university or that some work is duplicated in another institution.

Table 1. Income of four leading private universities, of two semi-public universities, and of public higher educational institutions in certain states combined.

Institutions and States.	Services.		From Public Sources				From Private Sources.				
	Tuition and similar fees.	Board, rent and services.	Appropriations State and United States.	Income from endowments.	For increase of plant.	Gifts for current expenses.	Income from endowments.	Addition to plant.	Addition to endowments.	Other sources.	Total receipts.
Private Universities:											
Harvard,	$887,296	$162,451	--------	--------	--------	$282,758	$1,113,863	--------	$1,652,189	$189,057	$4,587,608
Yale,	563,054	198,097	--------	--------	--------	190,047	894,826	$27,700	2,318,547	26,089	4,218,355
Columbia,	1,851,961	122,297	--------	--------	--------	184,202	1,388,934	168,552	1,659,602	1,528,951	5,147,522
Princeton,	271,729	131,307	--------	--------	--------	106,362	197,467	--------	517,905	--------	1,224,770
Semi-Public Universities:											
Cornell,	600,243	208,465	$708,850	$34,429	$226,930	16,961	555,618	237,600	116,851	635,163	3,341,108
Pennsylvania,	726,813	214,361	427,892	--------	7,510	160,459	159,325	20,132	33,610	--------	1,730,392
States:											
California (1),	257,131	--------	1,671,349	84,202	364,171	96,086	157,040	470,040	96,086	300,705	3,490,988
Illinois (1),	246,923	--------	2,123,153	32,450	436,500	--------	--------	--------	--------	202,849	3,051,876
Iowa (2),	210,066	210,066	1,737,672	53,119	424,288	800	7,680	6,000	1,250	420,815	3,414,924
Michigan (3),	525,407	13,056	1,538,032	109,845	145,000	22,937	25,219	10,000	53,035	481,241	2,923,772
Minnesota (1),	290,884	--------	1,669,662*	55,030	155,300	--------	--------	--------	--------	264,590	2,603,489
New York (3),	657,328	208,465	854,970	34,429	260,938	16,961	596,972	237,600	121,626	727,739	3,844,968
Ohio (1),	233,856	21,984	1,278,211	59,844	255,252	3,355	--------	30,000	--------	103,200	2,589,821
Pennsylvania (3),	1,088,980	214,361	1,271,891	--------	70,943	180,132	186,219	86,923	33,610	192,997	3,357,766
Wisconsin (1,)	447,899	157,860	1,719,783	25,224	50,644	16,740	11,223	--------	--------	347,019	2,776,352

*The annual appropriation has recently been increased to $5,600,000.

It may be observed from this table that in the first group there is no public support of any kind, that in the third group, private support is small or entirely absent in all states except New York, Pennsylvania and California. In New York and Pennsylvania control is private, while California furnishes an example of a type of support and control which should in the interests of society be further developed and extended. The control of the University is in the hands of the Regents of the University of California and yet it has received in time gone by large endowments which are still being increased from year to year by substantial amounts. Money given to such boards by private persons will be used in the interests of all the people, for the citzens of a strong healthy democracy will take care that such trusts are properly managed.

Table 2. Income per capita of students enrolled 1915-16.

Institutions and States.	Total Income.	Income Available for Current Expenses.
Private Universities:		
Harvard,	$871 17	$547 73
Yale,	1,291 18	573 03
Columbia,	884 83	650 55
Princeton,	674 76	437 64
Semi-Public Universities:		
Cornell,	575 45	475 32
Pennsylvania,	331 81	320 58
States:		
California,	536 90	409 19
Illinois,	521 71	447 05
Iowa,	513 98	440 08
Michigan,	352 84	327 74
Minnesota,	333 68	313 77
New York,	546 44	473 13
Ohio,	383 84	333 73
Wisconsin,	541 08	534 37
PENNSYLVANIA,	326 62	290 47
Pennsylvania,	331 81	320 58
Pittsburgh,	276 30	250 52
State,	368 49	342 33

In order that comparisons may be facilitated, Table 2 is furnished which contains the income given in Table 1 reduced to the amount per student for the year in question—first, the total income per student, and second, the income available for the payment of expenses by omitting columns 6, 9 and 10 in making the calculations. From this table it may be seen that in 1915-16 the state of Pennsylvania and also the particular institutions of Pennsylvania occupied a very low position. Pennsylvania was the only state in which the total income of its combined institutions fell below $300 per student. At the higher extreme was Wisconsin with an income of over $500 the actual difference in amounts being $244 or 84 per cent. of Pennsylvania's income. In four states incomes ranged from $400 to $499, and in three states from $300 to $399. There was a wide margin, however, between these two groups of states, the highest in the latter having an income of $333 and the lowest in the former an income of $409, a difference of $76. The low position of the state of Pennsylvania was partly caused by the small income of the University of Pennsylvania, which fell between the incomes of the states

of Michigan and Minnesota, the seventh and eighth states respectively, but more particularly by the low income of the University of Pittsburgh, $250, $40 below the level of the state of Pennsylvania as a whole. Three hundred and forty-two dollars, the income of State College, was nearer the normal, falling as it did between the two groups of states, although quite near the lower one The income of Wisconsin the highest state was 67 per cent. greater than that of the University of Pennsylvania, 57 per cent. greater than that of State College, and 114 per cent. greater than that of the University of Pittsburgh, while the income of California, the median state, was 28 per cent. greater than that of the University of Pennsylvania, 20 per cent. greater than that of State College, and 64 per cent. greater than that of the University of Pittsburgh.

When comparison of Pennsylvania's institutions is made with those of the large endowed private institutions located in the North Atlantic states, the financial limitations placed upon them are all the more striking, for all but one of them—Princeton—had a higher income than the highest state—Wisconsin. Taking the University of Pennsylvania as the institution of this state, most similar to these private institutions, Columbia had an income 103 per cent. greater than the University of Pennsylvania, while Yale's income exceeded hers by 80 per cent., Harvard by 74 per cent., and Princeton by 41 per cent.

QUESTION IV.

What are the factors that cause the large difference in income per student between different higher educational institutions.

A partial analysis of the incomes of the large private universities and of the combined state institutions by states is given in Table 3. The incomes from tuition and other educational fees were approximately $123 greater per student in the private than in the state institutions, $168 and $45 respectively, using the median figures. The income from fees for the state of Pennsylvania, $105, lies just midway between these two groups. The University of Pennsylvania's income from fees, $138, is very near the half-way point between the combined Pennsylvania figure and the median of the purely private universities. The University of Pittsburgh's income is $10 less, while State College obtained from fees were very low $30, which is $15 less than the median fee of all the states.

Table 3. Amounts received per student enrolled from various sources of income.

Institutions and States.	Number of Students.	From Tuition and other Educational Fees	Appropriations, State and United States.	Income from Endowments and Gifts for Current Expenses.
Private Universities:				
Harvard,	5,266	$168 47	------	$265 21
Yale,	3,267	172 32	------	274 69
Columbia,	7,803	237 33	------	201 60
Princeton,	1,615	168 23	------	188 04
Semi-Public Universities:				
Cornell,	5,806	103 37	$122 08	104 52
Pennsylvania,	5,275	137 78	81 09	60 64
States:				
California (1),	6,502	39 54	257 04	51 87
Illinois (1),	5,850	42 20	362 92	5 53
Iowa (2),	5,741	36 57	302 66	2 38
Michigan (3),	8,286	63 40	185 61	19 05
Minnesota (1),	7,802	37 27	213 90	7 04
New York (3),	6,801	96 64	125 70	90 26
Ohio (1),	5,095	45 88	250 87	12 40
Wisconsin (1),	5,131	87 27	335 15	5 43
PENNSYLVANIA (3),	10,282	105 92	123 71	35 65
Pennsylvania,	5,275	137 78	81 09	60 64
Pittsburgh,	2,579	128 73	95 30	18 03
State,	2,428	29 24	246 74	12 76

The appropriations per student for current expenses made by the national and state governments were lower in Pennsylvania than in any other state. The median state, Ohio, was over twice as large, while the highest state, Illinois, was granted appropriations three times as large. None of the private institutions had any income from this source.

In income from endowments and gifts for expenses, Pennsylvania had a better position as compared with the other states—$55—Whereas the median was $12, but the amounts received from this source by state institutions was so small in proportion to the income from other siurces that it did not help much to keep her out of the lowest position in total income. When her income from endowments and gifts is compared with the income of the private universities from this source, the state of Pennsylvania's portion seems pitiably small. The situation was not much better for the University of Pennsylvania, the state's most favored institution in this particular. Her income from endowment and gifts available for expenses of $60 per student was more than quadrupled by both Yale and Harvard and more than tripled by both Columbia and Princeton:

The total endowments of these institutions as they were in 1917 are given in Table 4.

Table 4. Endowment funds of institutions and of states.

Private Universities:	
Harvard,	$33,742,854
Yale,	21,181,302
Columbia,	36,773,264
Princeton,	6,565,010
Semi-Public Universities:	
Cornell,	14,221,996
Pennsylvania,	8,482,489
States:	
California,	5,490,430
Illinois,	649,012
Iowa,	1,026,343
Michigan,	1,327,412
Minnesota,	1,785,570
New York,	----------
Ohio,	153,133
Wisconsin,	704,399
PENNSYLVANIA,	9,559,030
Pennsylvania,	8,482,489
Pittsburgh,	567,541
State,	500,000

This review of the facts seems to warrant the following conclusions:

1. That the income of State College on the per student basis held a median position although lower than the income of state institutions in the highest states. Its greatest deficiency in income is in fees received from students. On the whole, it must be said that higher education in agriculture and in engineering as represented at State College do not cause Pennsylvania's low position.

2. It follows, then, that it is the incomes of the two semi-public universities that cause the low position. The income from student fees in both these institutions is higher than in the state schools but lower than in private schools, due in part to the free scholarships granted students in return for state appropriations. They both lack much in endowment for the places they are fitted to occupy and the services they do render, and the public appropriations they receive are not nearly sufficient to make up the deficiencies.

3. It thus follows, in a word, that the low incomes are due either to small endowments or to small appropriations or to both, according to whether they are to be regarded as private, public, or semi-public institutions, respectively.

QUESTION V.

What amounts of endowment and of appropriations would have been needed in 1916 to have put the University of Pennsylvania on the same financial footing as Harvard University—and what would be the amounts required at present?

Assuming both institutions were wholly private and that full tuition was charged, an annual appropriation would have been required for Pennsylvania of $1,197,425 in addition to the annual appropriation of $427,892 actually received; or if the University of Pennsylvania were public and only nominal fees paid by students, an annual appropriation of $1,685,250 would have been necessary. Turning now to endowments, the amounts that would have been necessary to bring in these additional sums of money are approximately

$23,000,000 and $34,000,000 respectively. To bring these figures down to the year 1920, $12,000,000, the amount of the additional endowment which Harvard has recently raised, or $15,000,000, which amount it seems she will be successful raising, should be added. The additional annual appropriation by the state to offset such a private endowment would be $600,000 or $750,000.

In a word, for the University of Pennsylvania to get on the same financial footing as Harvard and remain a private institution, she would have to increase her endowment by $49,000,000, and should she by so doing lose the annual state appropriation, she would have to increase her fees to Harvard's amount and look for annual gifts to make up the difference or else still further increase the endowment by $5,000,000 or $6,000,000, giving her a total endowment with the endowment of $8,000,000 which she already has of at least $60,000,000. Or if she should become a purely public institution, in order for her to have adequate support with the payment of only nominal fees from students, the total annual appropriation should be from $2,750,000 to $2,900,000. To support her on the same basis as the University of Illinois, $550,000 less would be required annually.

QUESTION VI.

What is the standard number of inhabitants for each higher educational institution?

The estimated population of each of such states on July 1, 1915, as given by the Bureau of Census, divided by the number of institutions is as follows:

California,	2,848,275
Illinois,	6,069,519
Iowa,	1,110,519
Michigan,	1,007,721
Minnesota,	2,244,761
New York,	3,362,189
Ohio,	5,088,027
Wisconsin,	2,500,350
Pennsylvania,	2,794,664

Illinois has two large private universities, Chicago and Northwestern; New York likewise has several, Columbia, New York University, Syracuse, etc. Ohio has two other state institutions not included in the tables above because of lack of satisfactory data. Taking these facts into account, it would seem that the present standard number of inhabitants for each higher educational institution is from 2,000,000 to 3,000,000.

QUESTION VII.

What is the wording of sections of constitutions of other states relating to universities?

The provisions of two types of states are given.

University of Wisconsin.

Section 6, p. 41. State University. Provision shall be made by law for the establishment of a state university at or near the seat of state government, and for connecting with the same, from time

to time, such colleges in different parts of the state as the interests of education may require. The proceeds of all lands that have been or may be hereafter granted by the United States to the state for the support of a university shall be and remain a perpetual fund to be called "the university fund" the interest of which shall be appropriated to the support of the state university, and no sectarian instruction shall be allowed in such university.

University of California.

Section 9, p. 86. The Universiity of California shall constitute a public trust, to be administered by the existing corporation known as "The Regents of the University of California," with full powers of organization and government, subject only to such legislative control as may be necessary to insure compliance with the terms of the endowments of the university and the security of its funds. Said corporation shall be in form a board composed of eight ex-officio members, to wit: the governor, the lieutenant governor, the speaker of the assembly, the superintendent of public instruction, the president of the state board of agriculture, the president of the Mechanics Institute of San Francisco, the president of the alumni association of the university and the acting president of the university, and sixteen appointive members appointed by the governor; provided, however, that the present appointive members shall hold office until the expiration of their present terms. The term of the appointive members shall be sixteen years; the terms of two appointive members to expire as heretofore on March first of every even-numbered calendar year, and in case of any vacancy the term of office of the appointee to fill such vacancy, who shall be appointed by the governor, to be for the balance of the term as to which such vacancy exists. Said corporation shall be vested with the legal title and the management and disposition of the property of the university, and of property held for its benefit and shall have the power to take and hold, either by purchase or by donation, or gift, testamentary or otherwise, or in any other manner, without restriction, all real and personal property for the benefit of the university or incidentally to its conduct. Said corporation shall also have all the powers necessary and convenient for the effective administration of its trusts, including the power to sue and to be sued, to use a seal, and to delegate to its committees or to the faculty of the university, or to others, such authority or functions as it may deem wise; provided, that all moneys derived from the sale of public lands donated to this state by act of congress approved July 2, 1862 (and the several acts amendatory thereof) shall be invested as provided by said act of congress and the income from said moneys shall be inviolably appropriated to the endowment, support and maintenance of at least one college of agriculture, where the leading objects shall be (without excluding other scientific and classical studies, and including military tactics) to teach such branches of learning as are related to scientific and practical agriculture and mechanic arts, in accordance with the requirements and conditions of said act of congress; and the legislature shall provide that if, through neglect, misappropriation, or any other contingency, any portion of the funds so set apart shall be diminished or lost; the state shall replace such portion so lost or misappropriated, so that the principal thereof shall remain

forever undiminished. The university shall be entirely independent of all political or sectarian influence and kept free therefrom in the appointment of its regents and in the administration of its affairs, and no person shall be debarred admission to any department of the university on account of sex.

MEMORANDA AND BRIEFS No. 35.

EDUCATION—STATE'S ABILITY TO GREATLY INCREASE APPROPRIATIONS.

Harrisburg, Pa., April 15, 1920.

Dr. Edgar Fahs Smith,
Chairman, Committee No. 5.

Dear Sir: I understand you desire a brief on the ability of the state to accord large additional support to education.

I submitted questions on this subject to Dr. Harlan Updegraff, Professor of Educational Administration, University of Pennsylvania.

The questions submitted to and answered by Dr. Updegraff were as follows:

> I. How heavy a load of taxation does Pennsylvania carry in comparison with other states?
>
> II. Is there sufficient private wealth in possession of the citizens of Pennsylvania to warrant higher taxation for educational purposes than now imposed?

I submit herewith Dr. Updegraff's replies to these questions

Very truly yours,
WM. DRAPER LEWIS,
Secretary.

REPLIES SUBMITTED BY DR. HARLAN UPDEGRAFF, PROFESSOR OF EDUCATIONAL ADMINISTRATION, UNIVERSITY OF PENNSYLVANIA,

QUESTION I.

How heavy a load of taxation does Pennsylvania carry in comparison with other states?

In 1918 there were but 9 states in the union which expended less per capita through their state governments than Pennsylvania and all of them were located in the south. Many states expended twice as much and some almost three times as much as Pennsylvania. The per capita amount for Pennsylvania was $3.32, for the entire United States $4.58, for New England $6.92, east, north central states $4.56, West north central $4.82, New York $5.51, New Jersey $6.85. (Bureau of Census, Financial Statistics of Cities 1918, p 92.)

In the same year the expenses of city governments and school districts per capita in cities of Pennsylvania were below the average for their respective groups in 17 out of 18 cases. In one-half the cases the per capita cost was less than 75 per cent. of the group standard; in one city it was less than 50 per cent. of the group standard. Table 1 gives the information in more definite form.

Table 1. Total expenses per capita for government of city and school districts in cities of Pennsylvania compared with standard rates for same groups in United States, 1918. (1)

Cities.	Population of Cities.				
	Over 500,000.	300-500,000.	100-300,000.	50-100,000.	30-50,000.
Group Average,	$24 06	$22 66	$16 41	$14 40	$14 98
Allentown,				11 14	
Altoona,				10 28	
Chester,					11 04
Easton,					12 09
Erie,				12 27	
Harrisburg,				12 16	
Johnstown,				10 89	
Lancaster,				8 72	
McKeesport,					12 16
New Castle,					11 11
Norristown,					5 97
Philadelphia,	21 60				
Pittsburgh,	25 38				
Reading,			9 36		
Scranton,		12 98			
Wilkes-Barre,				11 14	
Williamsport,					11 65
York,				7 79	

(1) Financial Statistics of Cities, Bureau of the Census, Washington, D. C. pp. 208-212.

The amounts per capita expended in 1916 for the various grades of education are shown in Table 2 for Pennsylvania and eight other states which are noted for the completness and quality of their educational system. From this table it may be observed that Pennsylvania is lower than any other state in the per capita amount expended for higher education and normal schools, fourth in appropriation for public schools, eighth in total state taxes and appropriations, sixth in local expenditures and eighth in the grand total.

Table 2. Distribution of state taxes and appropriations and of local expenditures for education per capita of total population 1915-1916.

(Report of Commissioner of Education, 1917, vol. 2.)

	Higher tion.	Schools.	Schools.	State Appropria-	Local tures.	
California,	$0 65	$0 25	$2 23	$3 13	$9 44	$12 57
Illinois,	0 40	0 18	0 66	1 24	7 15	8 38
Iowa,	1 11	----------	0 61	1 72	9 35	11 07
Michigan,	0 52	0 22	2 10	2 84	7 88	10 72
Minnesota,	0 75	0 17	0 77	1 69	9 17	10 86
New York,	0 21	0 09	0 58	0 88	6 70	7 [illegible]
Ohio,	0 42	0 05	0 61	1 08	7 89	8 97
Wisconsin,	0 67	0 58	1 04	2 29	6 67	8 96
PENNSYLVANIA,	0 15	0 04	0 88	1 07	7 24	8 31
				Total tions.		

From these facts it is evident that Pennsylvania is not taking nearly as much from individual wealth through the process of taxation, and expending it for school purposes as other states either for education or for all purposes. It follows that if the general practice elsewhere under similar conditions is a good guide, this state should expend more in order to deal justly with its individual citizens and to promote its general welfare.

QUESTION II.

Is there sufficient private wealth in the possession of the citizens of Pennsylvania to warrant higher taxation for educational purposes than now imposed?

Upon this point we have data from two sources. The bureau of the census has compiled the wealth in all the states subject to the ad valorem or general property tax and made estimates of its true value. Twenty-one states have larger amounts per capita than Pennsylvania, including five of those included in Table 1. Wisconsin, Michigan and Ohio have less amounts. Table 2 gives the per capita estimated wealth of all states in 1912, the latest data available on this point.

Dr. Robert Murray Haig, Professor of Economics, Columbia University, and an expert on taxation of wide reputation spoke as follows regarding the wealth of the commonwealth in a paper read at the University of Pennsylvania during Schoolmen's Week, April 8, 1920:

> "Everyone knows that the wealth of Pennsylvania is great and diversified, but a few statements may serve to emphasize how entirely adequate is its economic foundation. Its mineral resources are enormous. It has over 18½ million acres of land in farms, and the value of the farm property per acre averages about $20 more than is generally the case in the United States (1). Pennsylvania does more than one tenth of the manufacturing of the country (2). This one state pays more than one-sixth of all the federal income and profit taxes (3), and

nearly one-seventh of the federal estate tax (4). If, with all this wealth and income localized within its borders, those responsible for Pennsylvania's taxes cannot evolve some method whereby the schools of this state are supported as well as in surrounding states, they merely convict themselves of fiscal incompetency."

(1) Abstract of the Census, P. 276:

Value of farm property in Pennsylvania,	$1,253,274,862 00
Farm land in Pennsylvania (acres),	18,586,832
Value of farm property per acre in Penna.,	$67 43
Value of farm property per acre in U. S.,	$46 64

(2)

	U. S.	Pennsylvania
Number of establments,	268,491	27,563
Average number of wage earners,	6,615,046	877,543
Value of products,	$20,672,051,870	$2,626,742,034
Value added by manufacture,	$8,529,260,992	$1,044,182,046

(3) Statistics of income, compiled from the returns of 1917 under the direction of the Commissioner of Internal Revenue, Washington, Government Printing Office, 1919 p. 21.

Grand total (personal, corporate, and partnership),	$2,921,583,203
Grand total (personal, corporate, and partnership, Penna),	478,235,234
Percentages,	16.37

(4) Report, Commissioner of Internal Revenue, 1919, pp. 96-97-Pennsylvania paid, for the fiscal year 1918, $11,270,215.63 out of a total of $82,029,983.13 or 13.7%."

Table 3. Per capita estimated wealth of all states having less amounts than Pennsylvania and also of certain other important states.

(Report of Commissioner of Education 1917, vol. 2, p. 59.)

States.	Per capita estimated Wealth
1. Nevada,	$5,038
2. Iowa,	3,539
3. North Dakota,	3,374
4. California,	3,284
5. Nebraska,	3,110
6. Montana,	2,834
7. Colorado,	2,785
8. Oregon,	2,661
9. Illinois,	2,660
10. Kansas,	2,652

11. New York,	2,626
12. Minnesota,	2,582
13. Washington,	2,511
14. Oklahoma,	2,475
15. Arizona,	2,255
16. South Dakota,	2,239
17. New Jersey,	2,140
18. Utah,	1,979
19. Connecticut,	1,969
20. Pennsylvania,	1,939
21. Indiana,	1,894
22. Wisconsin,	1,875
23. Michigan,	1,873
24. Ohio,	1,817
25. Massachusetts,	1,805
26. West Virginia,	1,800

It should be remembered in considering the table, however, that it deals with only one source of taxation, namely, general property including real estate and personal property and only that part of the latter which is found by the assessors. It does not furnish comparable data relative to possible bases for taxes on business or corporations, on inheritances or on incomes.

The reports of the Commission of Internal Revenue furnish an index of the relative incomes of citizens of Pennsylvania and of other states. There was only one state in the union that had greater personal income per capita in 1918—New York. Pennsylvania's per capita was over twice as large as that of California, Michigan, Minnesota and New Jersey, almost four times as large as that of Wisconsin and New Jersey, almost four times as large as that of Wisconsin and nine times as large as that of Iowa. Table 3 furnished the amounts of income and profits taxes per capita of population paid during the year 1918 in 11 leading educational states.

Table 4. Receipts from income and profits taxes, total and per capita, in certain states, 1918.

(Report of Commissioner of Internal Revenue, 1919.)

States.	Receipts from income and profits tax, 1917-18.	Amount per capita.
California,	$76,615,000	$26 02
Illinois,	275,579,000	44 79
Iowa,	14,972,000	6 74
Michigan,	71,061,000	23 26
Minnesota,	58,218,000	25 54
New York,	685,449,000	66 76
Ohio,	241,027,000	46 80
Wisconsin,	39,192,000	15 67
Pennsylvania,	495,881,000	58 18
New Jersey,	71,811,000	24 35
Massachusetts,	166,598,000	44 79

While comparative data relative to the value of estates subject to a reasonable inheritance tax are not available, there is good rea-

son for believing that the amounts in this state are larger per capita than in most states. It is also a well known fact, as pointed out by Mr. Robert K. Young, a former treasurer of the commonwealth, that there are many millions of dollars invested in manufacturing establishments that pay no corporation tax, though other kinds of corporations are taxed. The face value of capital stock of such corporations is estimated as amounting to over $1,000,000,000. An extract from Mr. Young's address to the State Teachers' Association in December, 1916, upon this subject is as follows:

> "As suggestive merely, and without any expression on my part of the wisdom of such a course at this time, I will call your attention to manufacturing corporations in Pennsylvania. They are now untaxed except upon corporate loans. In other words, the capital stock of manufacturing corporations is untaxed. Have they not now reached a stage of development where they might reasonably be asked to assume some portion of this burden? By the report of the Department of Labor and Industry I find that the industries reported to that department of the state government for the year 1914 had capital invested aggregating $2,341,000,000. Do not be misled by this statement. This does not mean that this sum represents the capital stock of these corporations, because upon investigation it would no doubt be found that the capital invested is greatly in excess of the amount represented by the capital stock, not to mention the fact that many industries are conducted by private individuals. *(Schoolmen's Week Proceedings, 1918, p. 73.)*

Income taxes are now levied by 15 states. Our present inheritance taxes and corporation taxes can be extended without burdening unduly those upon whom they would be imposed and without causing interference with enterprises that are essential to the welfare of society. It seems to follow, therefore, that Pennsylvania can raise more money for education without causing any appreciable burden upon her people.

It would appear that state income should be derived from these sources in preference to increasing the property taxes. There is a considerable number of school districts in the state that cannot bear a further increase in the real estate taxes without causing an undue burden. On the other hand, there are many more districts of which this is not true. Under these circumstances state taxes should avoid the tax on real estate. *(In support of this statement see Brief No. 32, p. 295.)*

In reply to the query—How Pennsylvania should raise annually thirty-five million dollars for education in addition to the present appropriation, Dr. Murray Haig, in the address referred to above, said:

"A sum of such dimensions cannot be secured by pretty trifling taxes of minor types. It is necessary to evolve a levy of broad application and high productivity. Some general tax on property or income is required. The answer which has been given of late years

in other states where similar problems have arisen has been the development of a state income. Such taxes now exist in fifteen states, twelve of them having adopted the measure during the last decade after Wisconsin had shown the plan to be a practicable one. *(See H. L. Lutz, The Progress of State Income Tax since 1911, American Economic Review, March 1920, p. 66, et, seq.)* A personal income tax could be fitted into the existing state system with almost no structural disturbance. Or the existing hodge-podge of special state taxes on various types of corporations could be consolidated into a business income tax with rates and exemptions arranged so as to increase the revenues very materially. Or both the personal and business income taxes might be introduced, which would bring about a condition analagous to that now existing in Wisconsin and in New York.

But how should a state tax have to be to meet the situation? The federal tax is heavy and highly progressive. Does it preempt the field? The answer is that it does not in other states. Again, the state constitution in its present form apparently makes it impossible to impose a state tax at progressive rates. Can the rates be so reasonable as to make graduation unnecessary? What are the figures?

The most simple proposal would be to raise 35 million dollars by an income tax on personal incomes only, leaving business to the tender mercies of the present special state taxes. The federal income tax returns afford the best basis for computation. The latest figures published are for the year 1917. *(Statistics of Income, 1917, pp. 9 and 24.)* On the basis of the 1917 returns, a personal income tax, with taxable personal income so defined as to include dividends, as is the case in New York law, with the same personal exemptions as the federal law, a state income tax in Pennsylvania would yield about nine million dollars for each one per cent. of the rate. A 4 per cent. personal tax would, consequently, yield about $36,000,000, or approximately the sum desired.

These figures assume that a state income tax assessment would be as efficient as the federal assessment. The Wisconsin assessment has the reputation of being more efficient. Morever, the administrative expense is not great. It costs Wisconsin about $35,000 annually. On the same basis it would cost Pennsylvania about $175,000 annually.

If the state income tax rate were not more than four or five per cent. the question of graduation would not be of primary importance. This year the federal normal rate on individuals was reduced from 12 and 6% to 8 and 4%. The imposition of a 4% flat rate by Pennsylvania would be equivalent to re-establishing substantially the progressive scale which previously existed last year under the Federal law alone.

If, instead of merely adding a personal income tax, leaving present state business taxes as they are, it were considered desirable to tax business as well as individuals by the state income tax method, a rough calculation yields the following result: For each one per cent. of tax the yield would be about twenty millions, if one excluded dividends from the personal returns, and about 24½ millions for each one per cent. if individuals were taxed on their dividends. In

other words, a tax of perhaps three per cent. on this basis would make it possible to sweep away the present state taxes on business and would provide the moneys needed for schools in addition.

If a four per cent. personal income tax seems large the possibilities of a progressive inheritance tax should receive consideration. For this a change in the constitution would be necessary. Figures supplied by the comptroller-general show that estates to the estimated value of 286 millions were subjected to tax in the state in 1919. On this sum the state collected $7,841,191,05, or 2.7 per cent. Some states now have inheritance taxes graduated to as much as 15 per cent.

Harrisburg, Pa., April 14, 1920.

Hon. William I. Schaffer, Chairman.

Dear Sir: By resolution adopted this day by the commission I was directed to have printed the brief submitted by Mr. Kenneth L. M. Pray, Secretary of the Public Charities Association of Pennsylvania.

I append hereto Mr. Pray's brief.

Yours very truly,

WM. DRAPER LEWIS,
Secretary.

BRIEF OF KENNETH L. M. PRAY, SECRETARY, PUBLIC CHARITIES ASSOCIATION OF PENNSYLVANIA, ON STATE AID TO PRIVATE SOCIAL AGENCIES IN PENNSYLVANIA.

A Brief Discussion of the So-called Subsidy Policy—Its History, Its Consequences, Its Prospects—With Special Reference to Constitutional Restrictions or Prohibition.

HISTORICAL PREFATORY NOTE.

The subsidy policy is rarely defended on principle. Its chief support is derived from the fact that it has been long established in Pennsylvania, that our whole system of social welfare enterprises is built upon it.

The fact is, that it is not the outgrowth of settled policy, but the result of accident and emergency, long since passed. It was begun as a temporary expedient for meeting certain responsibilities just beginning to be recognized and accepted by the state as a whole and which it was not then ready to fulfill adequately. A breif review of its development will make this fact clear.

Aside from small appropriations made to the Pennsylvania Hospital by the provincial legislature, in 1752, and by the state legislature, as late as 1796, the subsidy policy may be said to date from the early twenties of the nineteenth century, when the first appropriations were made to the Pennsylvania Institution for the Deaf and Dumb, Mount Airy; the House of Refuge (now the Glen Mills Schools) and the Pennsylvania Institution for the Blind at Overbrook. All of these institutions, it will be noted, were devoted to the care of groups of defectives and delinquents, for whom, at that time

and since, all governments have felt a special sense of responsibility. The same may be said of the Pennsylvania Training School for the Feeble-Minded, at Elwyn, and the Dixmont Hospital for the Insane, which first received appropriations in the early fifties. The Dixmont appropriations were undoubtedly the outgrowth of the same awakening as to the need of public provision for the insane which swept over the country as a result of Dorothy Dix's campaign of education, and which culminated at about the same time in the establishment of a State Hospital for the Insane, at Harrisburg, (1851).

The Civil War contributed a new emergency which was met by an expansion of the subsidy policy, to include homes for children, and hospitals for the care of war veterans, their orphans and widows. A fore-glimpse of this expension had been noted in the appropriations to the Northern Home for Friendless Children, beginning as early as 1859. But the war hastened the movement, and by 1865, 26 institutions were on the subsidy list, the aggregate amount appropriated in the year being more than $227,000.

The disorderly and offensive way in which the legislature distributed these favors, along with other special grants of state funds and privileges, contributed largely to the demand for the revision of the constitution which gave us our present instrument (1874). It also resulted in the creation of the state board of public charities, to advise the legislature and to check up the use of funds and the work done (1869).

The constitution-makers debated the subject at length, and finally decided practically to eliminate the subsidy system, by the insertion of constitutional provisions against appropriations to sectarian institutions, and requiring a two-thirds' vote of the members of the legislature for the passage of such bills. Neither restriction was effective.

The reason can be found chiefly in the influence of the state board of that time, which was consistently opposed to the constitutional limitations before and after their adoption. Its argument, however, was confined to the appeal for the dependent children of the commonwealth, especially "war-orphans", for whom the state could not or would not provide directly, and who needed care and training.

Up to this point, therefore, it is noticeable that the basis of the subsidy policy has been in the feeling of responsibility for certain especially helpless groups, for whom no other provision could immediately be made.

The decade 1870-1880 was the turning point. When once constitutional restrictions were overridden for the sake of certain groups, the demand became irresistible from other quarters. Between 1880 and 1890 the number of subsidized institutions increased from 8 to 68, more than half the beneficiaries at the end of the decade being general and special hospitals, bearing no relation to the special problems which originally were held to justify this doubtful expedient. The state board, alarmed at the course of events, declaimed eloquently and continuously against the legislature's reckless giving, its violation of the law which required applicants first to seek the recommendation of the board, and its inclination to admit any applicant to the treasury, so long as adequate influence could be mustered in its be-

half. But the board's protests were in vain. The following table, showing the aggregate amounts granted during and at the end of successive ten-year periods, speaks for itself:

Biennial Appropriations.		% Increase.	Decade Appropriations.		% Increase.
1871-72,	$604,981 24		1871-80,	$2,905,324 71	
1881-82,	850,570 49	40.4	1881-90,	5,485,622 24	88.8
1891-92,	1,722,686 52	102	1891-1900,	11,324,063 09	106.4
1901-02,	3,024,025 00	75	1901-10,	22,626,675 00	89.8
1911-12,	6,249,400 00	106	1911-20,	31,930,769 20	41.1
1919-20,	7,635,389 20	22			

At the present moment, Pennsylvania has drifted so far from its original policy that it is subsidizing homes for adults; institutions for the blind; homes and societies for child-caring and for child-placing; institutions for the deaf and dumb; institutions for epileptics; homes for fallen women and their children; general institutions of charity; relief societies and their like; hospitals, general and special; homes for incurables; homes for mental defectives and insane; day nurseries; reformatories; general sanatoria; institutions for the treatment of tuberculosis and homes for veterans and their wives. There is no type or character of social agency which cannot, with apparent propriety and precedent for support, seek and obtain the state's aid.

Another interesting indication that the subsidy policy has developed at random and by accident, rather than by forethought, can be seen in the interesting change of front of the state as to the basis of appropriations. In 1881, the state board announced that it would not recommend appropriations for maintenance, but only for buildings and improvements. In 1902, it naively announced that thereafter it would no longer recommend appropriations for buildings, but only for maintenance. The cause of this right-about-face is doubtless to be found in the growing pressure upon the public purse. The state's funds would satisfy a larger number of applicants, if distributed in relatively small amounts among many, than if granted in large sums, such as required for new construction.

The growth of the subsidy system, in comparison with other factors of growth and progress in the state, is shown in the following table:

Year.	Appropriations.		Population.		Revenue.	
	Total.	Increase.	Total.	Increase.	Total.	Increase.
1870,	$115,750	----	3,521,951	----	$7,000,000	----
1880,	171,400	98	4,282,891	21	7,000,000	0
1890,	822,047	379	5,258,014	22	10,000,000	42
1900,	1,149,515	39	6,302,115	19	15,000,000	50
1910,	2,650,200	136	7,665,111	21	29,000,000	93
1920,	3,837,695	44.7	c.9,200,000	c.20	52,000,000	79
Net gain,	----------	3,316	----------	261	----------	743

The subsidy system is properly condemned, in principle, on these grounds:

It is the product of opportunism, and, therefore, tends to prevent the growth of a unified policy, program and system of public philanthrophy.

It cripples and retards the development of public institutions for the care of groups of dependents for whom the state must accept a special responsibility, and for whom private philanthrophy, under no conditions, can as well and as safely provide, such as the insane, the feeble-minded, the delinquent and the dependent child.

It weakens private benevolence.

It prevents the introduction of new and improved methods of care.

It promotes the increase of cost of social work.

It encourages the giving up of dependents by their parents and guardians.

It encourages the acceptance of charity by those able to support themselves.

It opens the way for pernicious politics, lobbying and special interests to control or direct public philanthrophy.

It tends to obscure the proper relationships of church and state, and to throw religion into politics.

These points will be examined in the light of Pennsylvania's experience.

The preceding historial note has demonstrated the essential opportunism of the subsidy policy, in its development in this state. At every step, it has been seized upon as an easy, inexpensive, superficially *effective* way of accomplishing an immediate purpose, rather than as the *best*, most far-sighted method of meeting the whole need. By doing something, in this way, the state avoided the necessity of doing a full job, and lulled the people into a false sense of security and satisfaction.

An interesting illustration is to be found in the development of the state's policy with respect to dependent children. In the emergency years following the Civil War, the need for provision for these state wards was apparent. Instead of visualizing and tackling the problem as a whole, in the light of the best thought of the time, the state was content to take the supposedly easy way of leaving the care of children to private initiative, and encouraging private agencies through public subsidies. The result was an enormous growth of large, congregate orphan asylums and homes, which, now, having been subsidized and encouraged by the state, are practically vested with eternal life. It is almost pathetic to read the reports of the enlightened boards of public charities of later years, and to note their eloquent protests against this development, after it was too late to change the condition of affairs. In spite of continual urging, since that time, of the claims of agencies for placing children in family homes, rather than in great institutions, where they are apt to be lost in the mass, Pennsylvania still contributes five times as much to institutions in the shape of subsidies, as to child-placing agencies.

Indeed, the vested right of these great institutions to care for the dependent waifs of the state, is so secure and unshaken, even in these modern days, that Pennsylvania has not yet recognized the necessity

for creating an adequate and effective state-wide agency for the supervision and standardization of the work that is done for these helpless wards.

The case of the insane is another instance in point. The care of these unfortunate people, the mentally sick, in universally regarded as properly a function of the whole state. Pennsylvania has acted upon that assumption for fifty years. Yet, of the 20,000 insane now in institutions in this state, scarcely half are in state hospitals; the rest are in local institutions that, for the most part, are the barest of custodian asylums, without adequate facilities or personnel to do what needs to be done for these helpless creatures. Why?

Because the state, after distributing $75,000,000 to private institutions of general charity in the last fifty years, has lacked the funds to do its own task well. Consequently, the state's hospitals are overcrowded continually; an annual increase of 500 to 600 new patients a year is never provided for in advance, though certainly forseen; insufficient funds are appropriated for their ordinary maintenance, much less for the extension of their preventive work into the community, through out-patient clinics, social service departments, after-care, and the like, which are commonplaces of policy in most advanced commonwealths.

In the allied field of feeble-mindedness, a similar deficiency of state provision can be accounted for in the same way. Though it is universally recognized that the number of the feeble-minded is fully equal to that of the insane; that a large majority are incapable of orderly and useful citizenship apart from supervision, or without special training, yet less than a quarter of the number are under any sort of public care or supervision. Increased provision has been made in the last few years, under stress of constant agitation, but this has been grudging and tardy, as witnessed by the fact that the newest institution, the Village for Feeble-Minded Women, at Laurelton, authorized in 1913, was opened in December, 1919, with a prospective capacity of 160. It is almost true to say that no substantial progress has been made toward checking the propagation of mental defect, which would inevitably follow an adequate and prompt state-wide effort to segregate or supervise those now at large in the community.

Added significance is given to this situation, in view of the clear recognition by every student of social problems, that mental defect and disorder are accountable for a very large shares of the difficulties and misfortunes that are being met by other governmental and private agencies every day, at enormous expense. Its relation to delinquency and crime, to immorality and vice, to the spread of loathsome disease, to desertion and non-support, to neglected childhood, to vagrancy, pauperism and dependency in all its forms, to social unrest and industrial inefficiency—are too well known to need reiteration. The net effect of the state's present policy, then, is to pour out millions to institutions and agencies that are caring, in considerable measure for the products of social neglect of the mentally unfit, and to withhold from the state the necessary funds for stopping production of social maladjustment at its source.

In the treatment of crime, a similar story is told. It is the definite conclusion of modern study and experience that this, too, is essentially a state function. The authority of the state, which extends everywhere throughout the state, can alone cope successfully with

this basic problem of social peace and order. The treatment of criminals is coming to be regarded more and more widely as a specialized task, to be undertaken only by especially qualified and experienced persons, trained and accustomed to meet the problems of physical, mental and moral reconstruction of the social misfit. The county jail is universally conceded to be an abominable anachronism.

Yet, when it is proposed that this fact be recognized, and that the state, which alone can provide the necessary means for meeting the problem adequately, establish state farms and industrial homes, the first and sufficiently effective response to the suggestion is the assertion of the lack of funds. So an utterly futile scheme of district farms under joint county control is substituted, which, in four years, has not yet been put into operation anywhere.

Even the most trivial, and yet most necessary improvements are withheld from state institutions, on account of lack of funds, and inadequate maintenance a lowances are made regularly, as shown by the table given below. It states the minimum requirements of the state's institutions as a whole, as compiled by their managers, responsible, earnest citizens whose responsibility it is to know the facts; it compares these figures with those granted by the legislature at the latest legislative sessions.

	1915.	1917.	1919.
Amount required,*	$7,370,260†	$8,284,693†	$8,969,900
Amount recommended,‡	5,427,254	6,284,796	6,769,101
Amount appropriated,§	5,173,230	6,964,446	7,958,967

*As requested by the Boards of Managers.
†As recommended by the Board of Public Charities.
‡As granted by the Legislature and approved by the Governor.
§Not including amount needed for maintenance of the indigent insane; nor the needs of three institutions authorized in 1913, for which nothing was appropriated in 1915, and relatively little in 1917; nor the needs of the state's tuberculosis work, which was reduced in 1915 by $400,000 below the department's estimates; nor the mothers' assistance fund, which has never received half enough to permit an adequate and satisfactory meeting of the problem.

But apart from the handicap which the subsidy policy has imposed upon the state's institutions, it has had an even more harmful effect upon the general social policy of the state. The fact that the state has dabbled in many different lines of work; that it has encouraged, apparently with equal cheerfulness, both good and bad methods of providing for certain definite social needs; that it has, with apparent indifference to the logic of the situation and the experience of other communities, undertaken tasks which are regarded generally as purely local in character, and has left undone work which only the state can do effectively—has resulted in a confusion of authority, responsibility and function which retards the whole social program of the state. There is nowwhere in the Pennsylvania system any division of responsibility between state and local governments, as in most commonwealths; it is not possible to fix blame for unsatisfactory social work, or to assess credit for conspicuously good achievement.

There is no definite authority to which any person, in need of help of a certain kind, can turn, with assurance that help will be forthcoming. What determines, for example, whether a person in need

of charitable relief goes to the local almshouse, or to a private charitable institution, or receives aid in his own home? Only the accidental circumstance which leads him to apply first to one or the other. The same chance determines whether his support shall fall upon the state in part, or upon the local community, or upon private philanthropy exclusively. It may be matter of geography, but not of principle. The same lack of policy pervades the whole system.

Whenever and wherever the state sticks to its own task, and holds others to theirs, there is opportunity to trace responsibility and to organize authority, to the end that every citizen who needs care or relief or treatment shall receive it, according to his need and according to his deserts; not by accident but by the automatic and orderly administration of public law and of settled community policy.

The effect of the subsidy policy upon private benevolence is difficult to determine precisely, but it is clear that it relieves the private benefactor of a feeling of responsibility for the welfare of the benevolent institutions of his own community.

Private philanthropy has undoubtedly decreased, relatively to the need, in Pennsylvania. In 1875, the state board of public charities reported that the state's aid constituted about one-ninth of the total income for maintenance, of the institutions assisted. In 1912, the same board asserted that about one-half the income was provided by the state. The latest published tabular statement omits the item "donations and contributions" formerly included, but it appears that the state's appropriations, amounting to a little less than a third of the total receipts (including receipts for construction and permanent improvements), are twice as great as all other items combined in which private contributions could possibly be included.

The following table, by decades, gives some pertinent facts, concerning the income of subsidized hospitals:

Income.	1890.	1900.	1910.
From the state,	$260,000†	$754,000	$2,005,700
Private donations,	475,000	713,850	322,914
Investments,*	*	*	341,870
Cash on hand at beginning of fiscal year,*	325,000*	843,549*	42,047
Other sources, including pay for services, and borrowed funds,	c.680,000	1,673,750	2,816,500
Capacity, in beds,	3,800	8,450	12,523

*In 1890 and 1900, the item cash on hand also included returns from investments and interest.
†In 1890 the item state was lumped with municipal subsidies.

The following table has been prepared in an effort to trace the effect of subsidies upon private benevolence, with reference to a few typical scattered institutions, which have continuously received increasing state aid since 1890.

Table Showing Relative Amounts Received by Typical Institutions From State Appropriations and From Private Contributions at Decennial Intervals.

Name.	1890.		1900.		1910.	
	Appr.	Priv.	Appr.	Priv.	Appr.	Priv.
Adrian, Punxsutawney,	$1,500	$1,000	$6,500	----------	$11,500	$4,000
Allegheny General, Pittsburgh,	8,000	4,000	17,500	$3,200	87,500	4,100
Altoona,	3,000	2,800	6,000	4,600	25,000	2,700
German, Philadelphia,	2,500	30,000	7,500	6,800	10,000	1,000
Gynecean, Philadelphia,	5,000	3,450	10,000	1,000	15,000	----------
Homeopathic, Pittsburgh,	3,018.76	8,500	22,500	13.500	55,000	1,000
Jefferson, Philadelphia,	5,000	----------	25,000	2,000	95,000	2,500
Reading,	1,500	3,000	7,500	2,800	10,000	2,500
Western Penn., Pittsburgh,	12,500	2,500	35,000	3,900	62,500	----------
Wilkes-Barre City,	7,500	9,200	12,500	6,000	22,500	2,300
York,	----------	----------	2,500	2,100	10,000	----------

Dr. Amos G. Warner, the author of the classic treatise upon "American Charities," in condemning the whole subsidy system without qualification, attempts to explain this effect upon private benevolence, in this fashion:

"Individual contributors dislike to have their mites lost in the abundance of public appropriation. Almost without exception those institutions that have received public aid the longest and the most constantly receive least from private contributors. In looking up the history of a considerable number of institutions, it was found that after the public became a contributor, private contribution fell off from year to year, not only relatively, but absolutely, and in some cases ceased altogether."

Commenting upon this statement of fact, in a report issued in 1899, Bird S. Coler, Comptroller of the City of New York, added:

"This view is abundantly sustained by the statistics appended to this report."

The prophecy of our own state board, in 1885, that the demands upon the public purse would multiply, and private benevolence be weakened, as the "managers of institutions come to see that state aid is the easiest financiering," seems to have been borne out in this state, in its fullness.

V.

The statement that the subsidy system prevents the introduction of new and improved methods of social work is not capable of mathematical demonstration, but it is almost the unanimous conviction of students of the problem throughout the country.

Certain underlying principles and reasons may be suggested in this connection:

One of these is to be found in the second section of this statement, namely, the influence of the subsidy system to retard or prevent the formulation and execution of a comprehensive, state-wide, unified system of public philanthropy, forcing the acceptance of temporary and opportunistic expedients which are soon left behind in the march of progress, but are so intrenched by public subsidies as to be practically

perpetual barriers to progress. A particularly significant example is afford by the Pennsylvania policy, or lack of policy, with respect to the care of dependent children, which perpetuates a system of institutional provision which is regarded as worse than futile by modern students of the problem.

A more tangible and measurable effect is to be seen in the opposition of those who receive subsidies, to specific advances, which seem, or may be construed, to threaten the continued usefulness of long-established agencies. A system of vested rights and interests, buttressed by personal and community pride, intervenes to question the desirability of changes that are necessary for progress.

Every rise in standards involves expenditures for reconstruction, or the confiscation of improvements long since made and then outgrown. It is against human nature to welcome such adventures.

When the public treasury has been tapped to support the institutions and agencies that are later found to stand in the way of progress, there is added to the prejudice and pride of private patrons the reluctance of political agencies to confess mistakes of judgment, or lack of foresight. The result is that policies and institutions continue to receive public support long after they have been condemned to death by advanced public opinion.

It is the mixing of public and private funds and authority and responsibility, which produces this state of affairs. If an outgrown policy or institution is purely public in character, a far-seeing public administrator or legislator, backed by widespread public opinion, can frankly and fearlessly attack the old and blaze the way for an entirely new system. At least once in a generation this is likely to occur. There is political prestige and power in such an undertaking, and no private interest stands in the way.

If the system or institution is of purely private origin, an especially enlightened benefactor, without taking thought of the effect upon political or governmental policy, can revolutionize the private institution, or can set up a competent plan, as an experiment, in the hope that results may lead to the abandonment of the outgrown agency. No state investment or sanction of the old, stands in the way of new private enterprise.

It is for this reason, among others, that social scientists are practically unanimous in the conviction that the complete separation of public and private social efforts are advantageous to both. There is created a competition of service which is wholesome to both, and which holds both to the highest possible level of service.

There is an additional consideration which affects this problem. Public agencies are necessarily restricted by law, which represents the average of public opinion. They cannot go far beyond this average opinion without making themselves liable to criticism for the reckless use of public funds held in trust for the whole people. Much less they confide public trust funds to private hands for experimentation.

Private agencies, on the other hand, are beholden to no one but the relatively small group of contributors who furnish the funds deliberately for a special purpose, who are in constant and direct touch with the affairs of the agency they help, or can be, if they wish. They are at liberty to experiment, to investigate, to initiate, without running the risk of incurring the displeasure of a majority of their fellow-citizens.

Private agencies are thus free to set the pace, to demonstrate the need, to demonstrate the best means of meeting the need, to blaze the way for new efforts and enterprises, which, when tried and proved, government may adopt and carry on, either by absorption or by imitation. This is the history of social progress. The public school, the medical school and hospital, the hospital treatment of the insane, the visiting nurse, and numbers of similar social advances, are the product of independent private study and initiative, taken over by government only when the need and the benefit was clearly proved.

This is largely impossible, if the private agency is permitted to use public funds. The private philanthropy is then, at once, subject to the same restraints as the public philanthropy. Initiative and progress are deadened. The effect is not to quicken public enterprise, but to retard private enterprise.

VI.

One favorite assumption of those who advocate the subsidy system is this:

That the state, by utilizing private benevolence, spares itself the necessity of paying the whole cost of an adequate system of institutions and agencies for the social welfare.

This assumption is based upon superficial appearance, rather than clear perception of the fact.

The testimony of the state board of public charities, and of other official agencies has repeatedly been given to the effect that hospitals and homes have been created which were unnecessary, and whose maintenance is a burden, simply by reason of the assurance of the state aid. Duplication of facilities is not a saving, merely because the state does not bear the whole cost.

There is serious question whether the ease with which state aid is to be obtained has not caused the managers of private institutions to be less watchful than would be desirable, in the admission of so-called charity patients.

An interesting intimation to this effect is contained in a report of the State Board of Medical Education and Licensure, in 1916:

> "The almost universal custom was found to prevail of admitting to the wards at a price far below the cost of maintenance, patients fully able to pay the full cost, without any effort on the part of the hospital authorities to establish the facts—and in a surprisingly large number of such cases full fees were being paid to the attending physician."
>
> "A demand has arisen for private rooms which seems out of proportion to the original intents of these corporate bodies. The state has been appealed to for assistance and well-to-do patients have at times presumed to accept the benefits of the state's aid. Even physicians have at times encouraged this acceptance so they might indirectly secure a higher fee * * *. The habit of admitting patients to the ward service at lesser rates than they are justly able to pay, and for less than it costs the hospital to support them,—either because the patient wishes to economize or because the physician desires to be able to collect a fee—should no longer be tolerated. The full cost of maintenance should be required of all patients having the

ability so to pay; under no circumstances should the physician profit as a result of charity extended by the state. Instances were numerous in which public corporations, assuming to care for their employes, did so with part aid from the state funds."

In comparison with the efforts made by the state in its own institutions to check the unfair acceptance of the state's charity, most of the private institutions are certainly lax, to say the least. It is next to the impossible, to cause efficient standards in this respect to be adopted and systematically followed by private agencies receiving public aid.

The tendency, therefore, is clearly, to increase the aggregate cost of social work to the community, and, therefore, to add to the state's own burdens.

The tendency to repress the state's efforts to deal with certain causes of dependency and delinquency, is a factor, which must be considered in this connection, already stated at length. Preventive work is more economical than corrective effort.

It is human nature to be less careful in the expenditure of money which one receives without laborious effort. Economy of administration and management is certainly not promoted by the distribution of tax-money among private agencies.

There is certainly grave doubt, therefore, whether public subsidies do actually reduce the aggregate burden to the state, in dealing with social work.

VII.

What has been said with respect to the danger of too reckless an extension of charity by subsidized institutions, has a deeper significance than the mere expense involved.

The function of the state, in social work, is not merely to meet immediate needs, through charity, but also to encourage and assist those on the border-line of dependency, to retain and to regain a normal independence. To encourage dependency, or the acceptance of charity, by those who are not actually in need of charity, is a base and vicious policy.

The argument, therefore, that the subsidy policy enables the poor to receive help from the government, without suffering the stigma of pauperism, is, to say the least, two-edged. Unless such charity is carefully safeguarded, it has a distinct tendency to pauperize, by leading those who could remain independent, and who could pay for the service which the government renders, to accept the state's charity.

The testimony quoted above amply proves that such is the case not infrequently in Pennsylvania.

Private agencies are much more likely to discriminate between the worthy and unworthy applicant, between the financially capable patient and the financially incapable; they are much more likely to search out the circumstances and hold relatives responsible for the care of the beneficiary, where that is fair and just,—so long as they are not administering public funds, but only the contributions of their own supporters. Public officials, responsible to the taxpayers, can be held to account by an alert public opinion, for their own lax-

ness in the distribution of charitable funds. Where responsibility is divided, the danger of abuse of charity grows.

It is the testimony of social workers everywhere that the use of public funds by private agencies has two inevitable consequences. It encourages the agency to retain its beneficiaries as long as possible, so as to augment the amount of work done, upon which the size of the subsidy usually depends. It also encourages the shiftless or reckless parent or guardian or responsible relative, to relieve himself of the burden of care, by shouldering the responsibility upon the state. Especially in children's work, therefore, the influence of the system is to disrupt, rather than to build up, family life, which is the basis of sound social structure.

VIII.

Pennsylvania affords a classic example of the inevitable effect of the subsidy system upon the fundamental American policy of the separation of church and state. The debates of the constitutional revision commission have disclosed anew the danger of this situation.

It has repeatedly been said: "If the business of the state is to dispense charity, why discriminate in our aid between agencies of a religious sectarian character, and others, so long as they both actually serve the charitable purposes of the state?"

The question is practically unanswerable. Indeed, it may readily be shown that much of the most useful and constructive charity is administered by religious societies, and it is precisely this type of charity which the state should encourage.

Yet to support sectarian societies is contrary to the very foundations of American governmental principle and policy. And by subsidizing charitable agencies of these societies we not only indirectly support and promote such societies, by building monuments to their service, but in many instances, we directly support their special views and purposes, especially in the case of children's homes, by assisting them to instruct their charges in a special faith.

This use of public funds is not acceptable to American citizens. If it were acceptable, this commission would not hesitate so to define "sectarianisms" in this constitution, as clearly to wipe out the prohibition against appropriations to institutions under sectarian influence and direction. The very difficulty of defining and clarifying the section dealing with these matters in the constitution demonstrates anew how far the subsidy system has driven us from the strict separation of church and state, which has always been the distinctive characteristic of American institutions.

It cannot, perhaps, be proved, but it may surely be suggested for consideration, that the granting of public funds to private agencies may have contributed somewhat to the unfortunate religious divisions and controversies that have occasionally arisen in our communities. Changes of favoritism or partiality toward one or another religious sect in this matter cannot be avoided, so long as any religious group is to be assisted at all.

It is not, certainly, beyond the possibilities, though I do not intimate it as a fact, that religious influences might find it advantageous to enter into political controversies, with an eye to the protection of what appears, with the sanction of state policy, to be a right to participate in the state's bounty for charity.

A recent notable example of this sort of thing in the city of New York, where city subsidies are granted to private institutions, has shocked and amazed the country. Frank entrance of religious groups into politics, on both sides of these groups with the policy of the city government, toward their charitable enterprises, with charges of favoritism, prejudice and bigotry flying thick and fast. It is worthy of note that this controversy arose in a community where the subsidy policy has been placed upon the soundest possible basis, that of per capita allowances.

I sumbit, therefore, that the surest way, the only sure way, of avoiding the pitfalls of confusing religious and secular interests in governmental policy, is to avoid, absolutely, state financial support of institutions under definite sectarion influence or control. And the only way to accomplish this, as shown by the experience of Pennsylvania and of other commonwealths, is to terminate, at the earliest possible moment, the state's aid to private agencies of any kind of character. No distinction in practice can be drawn, whatever may be possible in theory.

A somewhat analogous danger arises under the subsidy system, with reference to partisan politics.

The danger of the injection of politics into the state's own social enterprises, which is by no means negligible, is as nothing to the danager of injecting local private social enterprises into state politics, under the subsidy system.

The distribution of state funds as favors to many different agencies, under even the best of systems, presents temptations to reward faithful constituencies and to punish recalcitrant ones, which only supermen can wholly resist. It is peculiarly vicious, of course, where the distribution is accomplished by legislative log-rolling, but it is not wholly excluded where the distribution is by an executive agency.

However automatic the distribution—and the commission has gone far toward making the distribution automatic, rather than arbitrary, —there still exists the possibility of unfairness or partiality, which opens the way to political fault-finding and prejudice.

Nothing could be more pernicious than political aggrandizement by use of state money, in connection with the state's most exalted activity, the expression of its humanitarian instincts. The fact that these agencies of human welfare are invariably close to the merits of the most high-minded citizens of the community, gives peculiar leverage to the type of politics which is willing to play upon human sympathies in the interest of base selfishness.

It is not unheard of that representatives in the general assembly appeal to their constituents for support or re-election on the strength of the amount of state money which has been made available for local use, by the representative's influence at Harrisburg. Is it utterly inconceivable that a whole state political party should seek support, upon the promise to extend increased assistance to certain social enterprises especially close to the heart of doubtful districts?

It is clear that the commission has gone far to make this impracticable and unnecessary; probably as far as possible, it has accomplished the purpose, if the subsidy system is to be maintained at all. I submit that no restriction will be adequate, to exclude the possibility of pernicious politics in the distribution of the state's funds to private charities. The only certain way to divorce social

work and politics, is to limit the scope of the state's activities and enterprises to those that are actually state-wide in character and purpose, and are administered by officials responsible to the taxpayers, either directly or through a responsible administration.

With the enactment of proper civil service laws, and with growing appreciation of the necessity for alert public opinion on social matters, politics can be largely eliminated from the state's own works.

X.

THE ALTERNATIVES.

The foregoing arguments have been addressed to the subsidy system as a whole and in any form.

It is our belief that, in principle, it is wrong, and that, therefore, the state should place the seal of its disapproval upon it, and condemn it to death.

The inconvenience arising from the change, should, of course, be minimized. No worthy applicant for help should be denied help, even temporarily, simply to conform to abstract theory of political administration.

It is proposed, therefore, that the goal of complete elimination of subsidies be approached gradually, over a period of years. This would give opportunity for both public and private agencies to readjust themselves to the change. Such readjustment, without substantial injury to any interest concerned, least of all to the real subjects of charity, the individuals in need, is not impossible nor impracticable.

It does not involve the closing of all the charities, nor of any substantial number of them; nor does it involve the taking over by the state, of all the private charities now subsidized; nor does it necessitate the building up of an enormous centralized system of state institutions, to do the work now done by the subsidized agencies.

An adequate program—one of many possible programs—may be suggested:

(1) The removal from private charitable agencies and from the community, of those beneficiaries who are afflicted with handicaps that the state can best treat, and is actually treating—such as the insane, the feeble-minded, the psychopathic, the delinquent, the epileptic, and durg addict, the tuberculous, the incurable, those suffering from infectious and contagious diseases, such as venereal disease, and the like.

(2) The rapid extension of the state's facilities for caring for, treating and supervising these special groups, which, together, contribute a large share of the burden borne by private agencies now subsidized—certainly a quarter, perhaps more. By increased appropriations over a period of ten years, in accordance with a definite program of development, such as New York State, Massachusetts and other Commonwealths are now following, this development would be entirely practicable.

(3) The extension of the state's work for dependent children, either through direct child-placing and supervising agencies, or by the supervision and standardization of county agencies. The public support of this work, which is essentially a public task, would relieve many agencies of a long-continuing and burdensome problem. There

is no substantial reason why this should not be accepted just as definitely as a responsibility of the state and local governments as public education, for example, with which it is closely allied.

(4) The extension of the mothers' assistance fund, so that it may extend throughout the state and do an adequate job, thereby preventing the breaking up of homes, and the increase of juvenile dependency and delinquency.

(5) More aggressive and through-going efforts by the state to prevent dependency, through special education of physically and mentally handicapped children in the public schools, as authorized and directed by an amendment of the school code in 1919; through clincis for the identification and early treatment of mental and physical defects likely to lead to dependency; through promotion of public health measures.

So much of the work now rendered by the private subsidized agencies would, by this means, either be taken over or reduced by the state, without embarking upon any fantastic state projects.

With respect to what remained to the private agencies, and this would of course still be a considerable amount of work, the burden could be met by several means:

(6) By community and joint appeals for financial support, which the experience of such cities as Cleveland, Detroit and many smaller cites, has demonstrated to be productive of largely increased general support, both financial and moral. The outpouring of benevolence during war-time, when the need was brought home vividly to every individual in the community; the astonishing development of service funds by great religious communities; the increasing disposition upon the part of private philanthropists to share their wealth with the whole community in the shape of social service endowments and foundations—these, with an ever-growing sense of responsibility upon the part of the citizen for the welfare of his fellows, will, in considerable part, at least, meet the added cost of private philanthropic effort.

(7) The close co-ordination of the workmen's compensation laws, with the social service requirements arising from industrial accident and institutions in industrial centers proper compensation for service wastage may be borne by industry as a whole, will assure to hospitals and institption in industrial centers proper compensation for service rendered to industrial workers. At present, this relationship between the workmen's compensttion fund, the hospital service and the state's charity fund, is obscure, to say the least, and there is clear indication —as for instance, in the development of the state's own hospitals for the sick and injured in the mining regions—that industry is not bearing its share of the cost. Further interesting possibilities are suggested in the development of health insurance as a state policy.

(8) Finally, private charitiable agencies, by more through and effective social investigations, can undoubtedly reduce total cost of service to be borne by chartiable funds, by collecting from those able to pay for service, such amounts as they can properly contribute; by differentiating more closely between the cost of charity service, in large words, for example, and the cost of private service in single rooms, and causing private patients to pay the full cost of the service rendered to them

It is unthinkable that private benevolence would not rise under proper stimulation, to meet the additional need of this situation. It

is clear from the records of other commonwealths, that this would be the case, A single example, in the matter of hospital beds, will illustrate this experience. Pennsylvania's total hospital bed capacity, in 1918, according to the Modern Hospital, was a little over 7 to a thousand of the population. The States of Ohio, Massachusetts, Illinois, New York, most nearly comparable in wealth and size to Pennsylvania, and which have granted no state subsidies to hospitals, have hospital bed capacities exceeding that of Pennsylvania. Private benevolence has easily risen to meet the need not covered by public institutions.

To summarize:

The program suggested, is expected

(1) To reduce the need of private charity, relatively, by

a. Causing the state to accept responsibility for all dependents of certain groups for whom it now cares, in part:

b. Stimulating preventive efforts, on the part of the state, against the cause of dependency that now burden private agencies;

c. Eliminating charity to those able to pay for service;

(2) To increase, relatively, the private charity funds, by

a. Educating and interesting the whole community as to the need of social work, and the responsibility of every citizen for its successful prosecution;

b. Encouraging community and joint appeals, thus reducing waste and duplication of financial efforts, as well as social efforts;

c. Co-ordinating workmen's compensation and similar social insurance laws, with the resultant social service, so that these funds shall compensate social institutions for the social service rendered as a result of industrial accident and disease.

XI.

Apart from the general faults of the subsidy system, the system as it exists in Pennsylvania is open to still further and much more serious objections.

In the first place, the appropriation of the state's funds to private charitable institutions, under the Pennsylvania system, owing to the lack of any fixed rule of distribution, is in the shape of special favors, which can be granted or withheld, increased or reduced, without cause or the assignment of cause.

This arbitrary power of distribution of large and small sums, without reference to need or merit, places every beneficary under direct obligation to the legislature, an obligation which can only be discharged by political support or subserviency in one form or another. The obligation is implied in the favor granted by the legislature, even though it is not always, or frequently, expressly acknowledged on either side.

It has evil consequences in two directions: in the legislative body itself and upon the community to which the favor is granted.

The legislative evils are both direct and indirect. The direct evil lies in the effect upon the initiative, independence and honesty of the individual legislator. The legislator, who recognizes the power of the dominant organization of the chamber, to fix arbitrarily, at a high or low figure, the appropriations to the institutions within his district, is, from first to last, under the shadow of that influence. Inde-

pendence of judgement and action is subject to punishment at the will of the dominant organization in the shape of reduced appropriations; subserviency or a "go-along" spirit, can be rewarded by an increase, or the prospect of an increase, in the appropriations. So clearly is this understood and recognized, that it is no longer necessary to parade the power of punishment and reward. It is seen and felt, as the club behind the door, even though it is not swung out in the open.

One instance of this sort of legislative discipline was freely reported in the press during a recent session, when a member, pledged to his party and his constituents, to vote against a certain candidate for legislative office, was openly threatened with the loss of the appropriation to the hospital in his district, and finally succumbed to this pressure, violating his pledges and his own sense of honor and propriety, in order not to jeopardize the social welfare of his community. The bare possibility of such political use of the appropriation weapon, even were it not frequently resorted to, would damn any system which tolerated it.

The effect of this situation, of course, is not only to prevent any systematic, orderly and equitable distribution of the charity fund, but to prevent, as well, the free, deliberate and orderly consideration of other problems of legislation, and, to subject all legislation to the control of a dominant group in the legislature, which may or may not propose and act upon measures on their merits. It is a sinister and destructive influence upon social legislation on every character.

The indirect effect of the system, as at present practised in Pennsylvania, is equally disastrous. The special appropriations to particular institutions represent to the legislator the most concrete, tangible benefit which his service can bring to his community, because such appropriations can be seen and measured. Increases from year to year indicate the member's increasing influence at Harrisburg. They form, therefor, a big item in the attention and interest of the member during the session. Hours of time must be spent in presenting the claims of the institution to the chairmen of the appropriations committee, and in following up these conferences with attendance upon committee meetings, when these items are under consideration. If these conferences do not appear to be productive, the member must consult with his colleagues, and muster influence, on the "You-tickle-me-I'll-tickle-you" principle, in support of larger appropriations for his particular institutions.

The waste of the legislator's time and energy in this proceeding, the exclusion of his thought on problems of wider scope and deeper significance, the promotion of a state of mind which unconsciously subordinates big things in legislation to little ones, and which makes the seeking and keeping of special favors and privileges the real test of value of a member's service, is an unqualified evil. That the formulation of the state's social welfare policy, and the distribution of its social welfare fund, should be dictated in this spirit and by these considerations is intolerable in a progressive commonwealth.

The effect of this legislative system upon the local communities is again both direct and indirect, and wholly vicious. The direct influence for evil comes from the obligation, before referred to, under which the best, most high-minded citizens in the community rest, as a

result of receiving a special favor from the political organization in the legislature. Though the obligation be neither expressed nor acknowledge on either side, it exists, at least in the mind of the political leaders. It necessarily curbs the independence and initiative of those who are responsible for the welfare of these benevolent institutions, unless they be extraordinarily forceful in character. A significant example of this state of things again was recorded publicy in connection with the instance cited above. Some of the best citizens of the community represented by the threatened member joined in an appeal to him, in effect, to sacrifice his personal and political principles, in order not to jeopardize the appropriation to the hospital in which they were deeply interested.

The indirect effect, again, is like that in the legislative halls. The community comes naturally to regard the state as a source of financial assistance, and to judge of their representatives' service, by the extent of financial help they can bring home to their community. Large questions of state policy are subordinated in their thought, to special interest and local advantages. The tendency of the system is to stifle public thinking upon questions of state-wide importance, by causing these to be overshadowed, in the record of their representatives, by matters of strictly local concern. The state's social policy and appropriations for social purposes should be based upon a state wide view of the needs and conditions. This is impossible so long as each community is chiefly interested in getting the largest possible appropriations for its own local institutions.

To avoid this state of things, it is necessary to prevent the designation of specific appropriations to specific institutions by the legislature, and to appropriate a lump sum for each class of institutions to be aided, to be distributed upon some uniform and automatic plan, which eliminates any power, anywhere, arbitrarily to grant special favors to any institution or community. This is admirably provided for in the budget provisions of the tentative draft of the constitution, already approved by the commission.

The only check upon the legislative situation under the present system, is the recommendation of the state board of public charities, to whom, under the law, every institution must apply before receiving an appropriation from the legislature.

The state board inspects the institutions as frequently as possible with the small force of workers at its command. It requires formal sworn reports of the work done, the financial affairs of the institutions and such other matters as are pertinent. It gives the institutions opportunity to be heard in their own behalf. It then recommends appropriations of certain amounts to those who, in its judgment, are entitled to state aid.

Granting that the work of this board is faithful and conscientious; granting that its influence has been useful in causing the legislature to be more careful and systematic in the appropriations—it is still true that the recommendations of the state board are only recommendations, which can be regarded or disregarded in specific instances with impunity and without the assignment of any cause. As the board has repeatedly itself complained, its recommendations are only worth as much as the individual legislator may consider them to be worth. The legislature itself, in fact, does not pretend to be

guided solely by these recommendations, but sends out committees of its own members, on tours of inspection, before determining the appropriations to be granted.

The result has been described in a memorandum submitted to the commission by its secretary, which shows that the appropriations differ widely, in the specific amounts, from the recommendations of the board, and vary upwards and downwards, without rhyme and reason, from the amounts recommended.

In the session of 1919, for example, of 297 appropriations to private institutions, less than one-half were identical with the amounts recommended by the board. Of those that differed, about one-third exceeded the amount recommended and two-thirds were less. In addition twelve institutions received appropriations despite the failure of the board to recommend any thing, and one other received no appropriation despite the board's recommendation. This is certainly a fair example, in view of the positive announcement by Governor Sproul, before the session began, that he would be governed by the board's recommendations and wished the legislature to be so governed. The action of the legislature, of course, showed wider discrepancies than the amounts finally approved by the governor.

But even if the recommendations of the board had been followed precisely by the legislature—which would, of course, have eliminated legislative politics, log-rolling and some other evils suggested above—the institutions. This, I believe, is a false assumption, as shown by point of the state, because the board's recommendations themselves are not governed by any uniform rule.

It is a common assumption that these recommendations conform, at least in general, to the cost of the charitable service rendered by the institutions. This, I believe, is a false assumption, as shown by the reports of the board itself, and by its replies to questions submitted by the Constitutional Revision Commission. In reply to a question as to the method of computing the value of free service rendered by these institutions, the secretary of the board shows that the "cost of free service" as designated in the reports, is not the actual cost of free service, because of three facts:

In the first place, the "number of days of free service" rendered is not computed by adding together the total of days of actual service rendered to patients from whom, or on whose behalf, no payments were received. This should be the natural and necessary starting-point for computing the amount and value of free service.

In the second place, the cost per capita per day, upon which the cost of free service is computed, is not the actual cost per capita per day of actual charitable service, but the average cost per capita per day of all patients, pay as well as free. Inasmuch as the per capita of pay patients, in private rooms, is undoubtedly much greater than the cost per capita of ward patients (which include all charity patients), the average of all is unquestionably in excess of the cost of the actual charitable service. As the State Board of Medical Education and Licensure pointed out, in a report quoted above, the private rooms of the hospital, for example, should be sources of revenue, but sometimes they add to the deficit. The computation of the cost of free service, by the plan now followed by the board, in lumping the two costs, necessarily conceals any deficit which may arise from inadequate charge for pay service, and transfers that deficit to the "cost of free service."

In the third place, before computing the cost of free service, deductions are made for "gifts and legacies," as well as for payments for service. In other words, many days of free hospital service rendered to patients may be omited from the total number of free hospital days reported to and by the board, because these have been covered by gifts and legacies.

The net effect of this system of computation is to confuse the actual cost of free service rendered by the institution, with the total deficit incurred, as frankly stated by the secretary of the board. This deficit may result from an excess of free service, from a total lack of local support in gifts and legacies, by an undercharge for service rendered to those able to pay and actually paying something or by inefficient or extravagant management. Whatever the source of the deficit, which the state is asked to supply, it is covered, in the board's reports, by the "cost of free service rendered."

Another factor of error or uncertainty, as to the actual cost of free service rendered, as computed by the institutions and as reported by the board of public charities, is the varying standard of admission of patients as free patients by the institutions. In response to the question of the Constitutional Revision Commission as to the control exercised by the state over the admission of such patient—which, of course, is an essential item in determining the extent to which the state is asked to, and should, aid the institution—the secretary of the state board declared that if the institution does not satisfy the board of public charities with respect to the admission and treatment of free patients," a recommendation is refused, or the quarterly payment by the auditor general is stopped.

Under this system, each institution is separately considered, without regard to any fixed and uniform rule. The absence of uniform standards and of a fixed rule, leaving the institutions subject only to the accidental interference of the state board, as a result of complaint or of suspicion, causes wide variations in the collection of payments from patients. This opens the way to conscious or unconscious discrimination among them.

But even if the amounts reported by the institutions, as the "cost of free hospital days," were the actual cost of free service, the figures show that the board's recommendations do not conform to this standard, much less the appropriations.

A memorandum submitted to the commission by its secretary shows that the ratio of appropriations to the "total cost of free hospital days" as reported for the year 1917, the last available figures, ranged all the way from 22% to 118%, among typical hospitals in all parts of the state. Similar discrepancies appear throughout the list of the 175 hospitals assisted.

A further opportunity for unsystematic giving by the legislature is the lack of control exercized by the state board over the actual cost of maintenance of the institutions. The per capita per diem cost varies from less than $1 to more than $5 among institutions of the same general class and kind. While the board calls attention to these discrepancies, in their preliminary report to the legislature last year, it seems not to have modified the recommendations in any substantial amount by reason of the fact, so that the institution with the largest per capita cost still appears to be entitled to the largest assistance according to the rule followed by the board.

The inevitable conclusion from these facts appears to be that while the state board of public charities is the only effective check upon disorderly and unfair appropriations by the legislature, it is by no means a wholly effective check under the present system. (See Table V).

The solution is to be found, it appears to us in the system analogus to that now followed in the distribution of the fund for the maintenance of the indigent insane, or of the fund for the common schools. Under such a plan, the legislature would appropriate a gross sum for distribution to a class of agencies, as the classes may be defined by law. The state board, by legislative authority, would fix certain clear, uniform standards of service and of records for the several institutions of a given class, covering the investigation of the financial capacity of those treated without charge, the character of service, facilities and personnel required, the keeping of books, reports, etc., as minimum requirements for those entitled to receive state aid. Then, upon the basis of some uniform standard, such as the number of free service days, or the like, every institution of a given class, conforming to standards, would be paid at a uniform rate from the fund set aside for that class by the legislature. Every arbitrary influence or act would thus be eliminated; the aid would be received as a right, not as a favor; and the aid received by all institutions of a class would be in exactly equal proportion to their service to the state.

Such a system would permit of classification upon any reasonable basis, as to the type of community, the type of service, the standards of excellence attained, the size of the hospital (as a factor in cost) or upon any other reasonable plan. But the class to which any institution belonged, and the basis upon which it would be compensated, would be determined by the facts of the case, and not by arbitrary selection or assignment.

XIII.

The effect of the state's unsystematic distribution of state funds is to be seen, also in the irregular and inconsiderate way in which whole classes of institutions are treated. Attention has been drawn to the fact that the original emphasis upon the need for assisting work for dependent children has long since been forgotten, and that four-fifths of all the institutions now assisted by the state are not even remotely connected with this work, a vast majority being hospitals, general and special.

Furthermore, while there are comparatively few hospitals in the state which do not receive state aid, a considerable number of societies dealing with children and other dependents have not yet been added to the subsidy list. With the exception of a few large hospitals in a few large centers of population, like Philadelphia and Pittsburgh, the work of the hospitals is confined almost wholly to their immediate vicinity, while the work of other charitable institutions is likely to cover a much broader area. To subsidize the former, which do chiefly a strictly local task, and to fail to subsidize the latter, whose work extends far over county lines, is certainly a reversal of sound state policy.

XIV.

Something has been said of the wide discrepancies in the way individual institutions of the same class are treated, in proportion to their apparent service and their apparent need.

Further interesting examples may be cited from the official reports:

Appropriations for maintenance per hospital bed, vary all the way from $25 to $625. Eliminating special hospitals, requiring special facilities with increased cost, the appropriation varies from $25 to $384 per bed.

Appropriations per bed of the average number occupied, ranged from $50 to $500.

Appropriation per in-patient treated during the year, ranged from $5 to $25.

Appropriation per free patient ranged from $50 to $200.

Appropriations range from 2% to 75% of the total maintenance expense, and from 3% to 80% of the total maintenance receipts. They bear no relation whatever to the proportion of charity work done by the institutions. Some institutions that devote themselves almost exclusively to charity, get comparatively little state aid, while others that do relatively little free work, receive relatively great aid from the state.

XV.

It is plainly the duty of the state not only to treat alike all who are equally serving the state, but it is also the state's duty to extend the benefit of state aid, or the opportunity of benefit alike to all sections of the commonwealth, and to all citizens who are in the same circumstances, regardless of their residence.

A proposal that the state should build the roads of Erie county, for example, but should leave Dauphin county to build its own, out of local funds, would be regarded as an outrageous misuse of state funds. Therefore, before embarking upon a state program of road-building, a map was drawn of the roads of the whole state, and a network of state roads was mapped out which would bring the benefit of the state's funds to all sections at least approximately in proportion to their need. When the state decided, in addition, to encourage local road-building, it did not leave it to the localties to beg their respective slices of the state aid fund, according to their enterprise and initiative and influence, but it promised equal aid to all localities that conformed to certain specified conditions of procedure.

It would be outrageously indecent for the state to say that it would care for the insane of Luzerne county, but would leave Lackawanna county to care for its own insane. So the state promises to provide for the care of all the insane, of every county, upon equal and uniform conditions. It has not lived up to that promise, as shown above, but within reasonable limits the benefits of the state's funds are open to every community upon equal terms.

A similar position is taken in the matter of education. The state does not leave to local communities the initiative in obtaining a share of the state's common school fund. It promises that every community, which conforms to certain standards, shall receive its rightful share, upon equal and uniform conditions with every other community.

Why should a different position be taken with respect to the care of the poor, or the sick, or the dependent children? Why should the state say, "We will provide for the care of the dependents of Jefferson county, but we will not be responsible for the care of those in Carbon country," for example? Yet that is precisely the egect of the present policy in Pennsylvania.

There are seventeen counties in Pennsylvania, scattered east and west. and containing a combined population of more than 400,000 persons, who receive not a dollar of the state's subsidy fund directly. As the attorney general remarked, during the debates upon this matter in the commission's sessions, it is generally assumed that the residents of those counties are cared for by the institutions in adjoining counties that do receive state aid. But has any one ever made inquiry to find out whether that is the actual fact, and whether, in fact, the residents of these counties are not placed under a very definite and decided handicap, as compared with the rest of the state, so far as their participation in the state's fund is concerned? Has any one ever mapped out, that is to say, even vaguely, the area of the state with respect to its need of state aid in charitable work, with the purpose in view to provide an adequate, comprehensive. fair distribution of that aid? Has it not been left largely to chance, or to private initiative, whether a given community actually benefited from the state's charitable policy or not?

The importance of this problem was early recognized by those who administered the state's funds. The very law creating the State Board of Public Charities, for example, required the board to report as to the institutions receiving state aid, "whether all parts of the state are equally benefited by them."

In the excellent report of 1886, the board reminds the legislature of this requirement in these words: "— unless universal or very general aid is extended to all such institutions in the state, it involves an unjust partiality, the whole state bearing the burden of certain localities but not of others."

Again in 1887, the board reported that "aid, when granted, should be distributed more evenly than it has been in the past, both to localities and classes of institutions."

Again, in 1897, the board, advocating a per capita system, said, "—This would operate more equitably throughout the state and prevent complaints of unequal distribution of the state funds, which cannot be avoided in the existing state of affairs."

In 1885, the board laid down the principle that "the distribution of these favors (sic) should bear a certain proportion to population and taxation, the same class of institutions being aided proportionately in different sections of the state."

Despite these warnings, no effort to map out the need of the state as a whole has ever been made, nor even an effort to assess the essential factors of that need. Much less has any such plan been put into effect.

An effort to diagram the need of state aid, by counties, is herewith reported, with its results. It is not proposed that the state fund should be distributed in accordance with this diagram, although it would be perfectly feasible, if the state's funds were to be distributed and administered by public authorities. It is submitted, however, only as a measure or test of the equality or equity with which sections of the state have been served by the subsidy system in the past.

TABLE I.

Showing Each County's Proportion of State Total.

County.	1 Population.	2 Wealth.	3 Industry.	Average of 1, 2 and 3.
Adams,	.0045	.0025	.0001	.0024
Allegheny,	.139	.2253	.1766	.1803
Armstrong,	.0087	.0028	.0036	.0050
Beaver,	.010	.0086	.0086	.0091
Bedford,	.0050	.0019	.0010	.0026
Berks,	.023	.0190	.0253	.0224
Blair,	.0140	.0086	.0140	.0122
Bradford,	.0070	.0042	.0021	.0044
Bucks,	.0098	.0082	.0056	.0079
Butler,	.0094	.0053	.0055	.0067
Cambria,	.021	.0086	.0180	.0159
Cameron,	.0009	.0006	.0006	.0021
Carbon,	.0069	.0052	.0120	.0080
Centre,	.0056	.0025	.0020	.0034
Chester,	.0140	.0135	.0086	.0120
Clarion,	.0048	.0018	.0013	.0026
Clearfield,	.0120	.0040	.0080	.0080
Clinton,	.0041	.0021	.0043	.0035
Columbia,	.0063	.0027	.0053	.0048
Crawford,	.0080	.0044	.0033	.0052
Cumberland,	.0070	.0052	.0033	.0052
Dauphin,	.0170	.0142	.0200	.0171
Delaware,	.015	.0154	.0133	.0149
Elk,	.0046	.0016	.0066	.0043
Erie,	.015	.0108	.0146	.0135
Fayette,	.021	.0169	.0200	.0193
Forest,	.0012	.0005	.0010	.0009
Franklin,	.0077	.0064	.0033	.0058
Fulton,	.0012	.0004	.....	.0005
Greene,	.0037	.0080	.0020	.0046
Huntingdon,	.0050	.0015	.0016	.0027
Indiana,	.0085	.0031	.0040	.0052
Jefferson,	.0082	.0025	.0053	.0053
Juniata,	.0019	.0009	.0002	.0010
Lackawanna,	.033	.0351	.0333	.0338
Lancaster,	.021	.0198	.0186	.0198
Lawrence,	.0091	.0062	.0075	.0076
Lebanon,	.0077	.0081	.0066	.0075
Lehigh,	.015	.0137	.0180	.0156
Luzerne,	.044	.0319	.0345	.0368
Lycoming,	.0105	.0047	.0073	.0075
McKean,	.0062	.0033	.0080	.0058
Mercer,	.010	.0075	.0080	.0085
Mifflin,	.0036	.0020	.0040	.0032
Monroe,	.0030	.0017	.0013	.0020
Montgomery,	.022	.0227	.0173	.0207
Montour,	.0019	.0010	.0010	.0013
Northampton,	.016	.0131	.0266	.0186
Northumberland,	.014	.0069	.0100	.0103
Perry,	.0031	.0017	.0005	.2018
Philadelphia,	.218	.3025	.2500	.2568
Pike,	.0010	.0004	.....	.0005
Potter,	.0038	.0014	.0020	.0024
Schuylkill,	.027	.0118	.0200	.0196
Snyder,	.0020	.0010	.0004	.0011
Somerset,	.0087	.0037	.0066	.0063
Sullivan,	.0014	.0003	.0013	.0010
Susquehanna,	.0049	.0011	.0010	.0023
Tioga,	.0055	.0029	.0020	.0035
Union,	.0021	.0016	.0006	.0014
Venango,	.0072	.0051	.0066	.0063
Warren,	.0051	.0026	.0033	.0037
Washington,	.018	.0225	.0133	.0179
Wayne,	.0038	.0022	.0017	.0026
Westmoreland,	.0301	.0278	.0233	.0271
Wyoming,	.0020	.0007	.0006	.0011
York,	.017	.0115	.0173	.0153

TABLE II.

Showing the percentage of the total subsidy fund which each county would receive if one-half of the subsidy fund were distributed in proportion to population, one-quarter in proportion to taxable wealth, and one-quarter in proportion to industrial population. The county's total percentage of the total subsidy fund under such a distribution is given in the last column. The figures given in other columns are percentages of the *total subsidy fund* which the counties would receive under their several allotments (on the basis of population, wealth and industry). The percentage *of each allotment* which each county would receive is shown in Table I.

County	Population.	Wealth.	Industry.	Total.*
Adams,	.00225	.000625	.000025	.0029
Allegheny,	.07	.056325	.045	.1713
Armstrong,	.00435	.0007	.0009	.0060
Beaver,	.005	.00215	.00215	.0093
Bedford,	.0025	.000475	.00025	.0032
Berks,	.0115	.00475	.006325	.0226
Blair,	.007	.00215	.0035	.0127
Bradford,	.0035	.00105	.000425	.0050
Bucks,	.0049	.00205	.0014	.0084
Butler,	.0047	.001325	.001375	.0074
Cambria,	.0105	.00215	.0045	.0172
Cameron,	.00045	.00015	.00015	.0007
Carbon,	.00345	.0013	.003	.0078
Centre,	.0028	.000625	.0005	.0040
Chester,	.007	.003325	.00215	.0125
Clarion,	.0024	.00045	.000325	.0032
Clearfield,	.006	.001	.002	.0090
Clinton,	.00205	.000525	.0010725	.0037
Columbia,	.00315	.000675	.001325	.0052
Crawford,	.004	.0011	.000825	.0059
Cumberland,	.0035	.0013	.000825	.0056
Dauphin,	.0085	.0035	.005	.0170
Delaware,	.0075	.00385	.003325	.0147
Elk,	.0023	.0004	.00165	.0044
Erie,	.0075	.0027	.00365	.0139
Fayette,	.0105	.004225	.005	.0197
Forest,	.0006	.000125	.00025	.0010
Franklin,	.00385	.0016	.000825	.0063
Fulton,	.0006	.0001	.000	.0007
Greene,	.00185	.002	.001	.0049
Huntingdon,	.0025	.000375	.0004	.0033
Indiana,	.00425	.000775	.001	.0060
Jefferson,	.0041	.000625	.001325	.0061
Juniata,	.00095	.000225	.0001	.0013
Lackawanna,	.0165	.008775	.008325	.0336
Lancaster,	.0105	.00495	.00465	.0201
Lawrence,	.00455	.00155	.001875	.0080
Lebanon,	.00385	.002025	.00165	.0075
Lehigh,	.0075	.003425	.0045	.0154
Luzerne,	.022	.007975	.008625	.0386
Lycoming,	.00525	.001175	.001825	.0083
McKean,	.0031	.000825	.002	.0059
Mercer,	.005	.001875	.002	.0089
Mifflin,	.0018	.0005	.001	.0033
Monroe,	.0015	.000425	.000325	.0023
Montgomery,	.011	.005675	.004325	.0210
Montour,	.00095	.00025	.00025	.0015
Northampton,	.008	.003275	.00665	.0179
Northumberland,	.007	.002725	.0025	.0122
Perry,	.00155	.000425	.000125	.0021
Philadelphia,	.109	.076625	.0625	.2481
Pike,	.0005	.0001	.....	.0006
Potter,	.0019	.00035	.0005	.0058
Schuylkill,	.0125	.00295	.005	.0215
Snyder,	.001	.00025	.0001	.0014

TABLE II, continued.

County.	Population.	Wealth.	Industry.	Total.*
Somerset,	.00435	.000925	.00165	.0069
Sullivan,	.0007	.0000725	.000325	.2011
Susquehanna,	.00245	.000275	.00025	.0030
Tioga,	.00275	.000725	.0005	.0040
Union,	.00105	.0004	.00015	.0016
Venango,	.0036	.001275	.00165	.0065
Warren,	.00255	.00065	.000825	.0040
Washington,	.009	.004625	.003325	.0170
Wayne,	.0019	.00055	.000425	.0029
Westmoreland,	.01505	.00695	.005825	.0278
Wyoming,	.001	.000175	.00015	.0013
York,	.0085	.002875	.004325	.0157
Total,	c. .50	c. .25	c. .25	1.00

*Fractions over one-half of one-hundredth per cent. have been counted as whole hundredths; smaller fractions have been dropped.

TABLE III.

Showing percentage of the total subsidy fund, and amounts, received by all counties by the appropriations of the session of 1919, and the percentages and amounts which would be received by each county, under the plan of distribution, by which one-half of the subsidy fund would be apportioned according to population, one-quarter according to taxable wealth, and one-quarter according to the number of persons engaged in hazardous occupations. (See Test and Table I and II.)

County.	Present Apportionment. %	Amount.	Proposed Apportionment. %	Amount.*
Adams,	.....	.....	.0029	$22,150 00
Allegheny,	.2734	$2,088,089 20	.1713	1,308,730 00
Armstrong,	.0010	8,000 00	.0060	45,840 00
Beaver,	.0110	84,000 00	.0093	71,050 00
Bedford,	.....	.....	.0032	24,450 00
Berks,	.0180	137,500 00	.0226	172,660 00
Blair,	.0121	93,000 00	.0127	97,039 00
Bradford.	.0052	40,000 00	.0050	38,200 00
Bucks,	.0051	39,000 00	.0084	64,175 00
Butler,	.0026	20,000 00	.0074	56,535 00
Cambria,	.0206	157,500 00	.0172	131,400 00
Cameron,	.....	.....	.0007	5,350 00
Carbon,	.....	.....	.0078	59,590 00
Centre,	.0026	20,000 00	.0040	30,560 00
Chester,	.0183	140,400 00	.0125	95,500 00
Clarion,	.....	.....	.0032	24,450 00
Clearfield.	.0069	53,000 00	.0090	68,750 00
Clinton.	.0062	48,000 00	.0037	28,270 00
Columbia,	.0027	21,000 00	.0052	39,730 00
Crawford,	.072	55,000 00	.0059	45,075 00
Cumberland.	.0023	18,000 00	.0056	42,785 00
Dauphin,	.0118	90,200 00	.0170	129,880 00
Delaware,	.0107	82,000 00	.0147	112,310 00
Elk,	.0027	21,000 00	.0044	33,615 00
Erie,	.0198	151,800 00	.0139	106,200 00
Fayette,	.0087	66,500 00	.0197	150,510 00
Forest.	.....	.....	.0010	7,640 00
Franklin,	.0019	15,000 00	.0063	48,130 00
Fulton,	.....	.....	.0007	5,350 00
Greene,	.0009	7,000 00	.0049	37,440 00
Huntingdon,	.0019	15,000 00	.0033	25,210 00
Indiana,	.0033	26,000 00	.0060	45,840 00
Jefferson,	.0113	86,600 00	.0061	46,600 00
Juniata,	.....	.....	.0013	9,930 00

TABLE III, continued.

County.	Present Apportionment. %	Amount.	Proposed Apportionment. %	Amount.*
Lackawanna,	.0313	239,400 00	.0336	256,700 00
Lancaster,	.0099	76,000 00	.0201	153,565 00
Lawrence,	.0085	65,200 00	.0080	61,120 00
Lebanon,	.0033	26,000 00	.0075	57,300 00
Lehigh,	.0130	100,000 00	.0154	117,650 00
Luzerne,	.0276	211,400 00	.0386	294,900 00
Lycoming,	.0134	102,400 00	.0083	63,410 00
McKean,	.0051	39,000 00	.0059	45,075 00
Mercer,	.0069	53,000 00	.0089	68,000 00
Mifflin,	.0026	20,000 00	.0033	25,210 00
Monroe,	.0005	4,000 00	.0023	17,570 00
Montgomery,	.0221	169,000 00	.0210	160,440 00
Montour,	....	.....	.0015	11,460 00
Northampton,	.0056	43,000 00	.0179	136,750 00
Northumberland,	.0023	18,000 00	.0122	93,210 00
Perry,	.....	.....	.0021	16,045 00
Philadelphia,	.3306	2,524,500 00	.2481	1,895 725 00
Pike,	.....	.....	.0006	4,585 00
Potter,	.0009	7,000 00	.0058	44,310 00
Schuylkill,	.0083	64,000 00	.0215	164,260 00
Snyder,	.....	.....	.0014	10,700 00
Somerset,	.0018	14,000 00	.0069	52,715 00
Sullivan,	.....	.....	.0011	8,400 00
Susquehanna,	.0005	4,000 00	.0030	22,920 00
Tioga.	.....	.....	.0040	30,560 00
Union,	.0003	2,500 00	.0016	12,225 00
Venango,	.0060	46,000 00	.0065	49,660 00
Warren,	.0030	23,000 00	.0040	30,560 00
Washington,	.0076	58,400 00	.0170	129,880 00
Wayne,	.....	.....	.0029	22,150 00
Westmoreland,	.0123	94,000 00	.0278	212,390 00
Wyoming,	.....	.....	.0013	9,930 00
York,	.0062	48,000 00	.0157	119,950 00
**Approximately,	.....	.....	.....	$7,640,000 00

*Odd dollars are dropped from the table, the nearest five being substitute.

**The total amount of the proposed distribution is the amount actually distributed at the last session of the legislature.

TABLE IV.

Showing apportionment of entire state subsidy fund by three methods, based, respectively, upon population, wealth, industry.

County.	Population.	Wealth.	Industry.	Received 1919.
Adams,	34,357	$19,087	$763	.....
Allegheny,	1,007,859	1,567,466	1,348,382	$2,088,089 20
Armstrong,	66,425	21,378	27,486	8,000 00
Beaver,	76,353	65,662	65,662	84,000 00
Bedford,	38,175	14,506	7,635	.....
Berks,	175,605	145,069	193,166	137,500 00
Blair,	106,893	65,662	106,893	93,000 00
Bradford,	53,446	32,067	16,033	40,000 00
Bucks,	74,824	62,608	42,757	39,000 00
Butler,	71,770	40,466	41,993	20,000 00
Cambria,	160,335	65,662	137,434	157,500 00
Cameron,	6,871	4,581	4,581	.....
Carbon,	52,863	39,703	77,880	.....
Centre,	42,757	19,087	15,270	20,000 00
Chester,	106,893	101,548	65,662	140,400 00
Clarion,	36,648	13,743	9,925	.....
Clearfield,	77,880	30,540	61,081	53,000 00
Clinton,	38,177	16,033	32,830	48,000 00
Columbia,	48,101	20,614	40,446	21,000 00
Crawford,	61,081	33,594	25,195	55,000 00
Cumberland,	53,446	39,703	25,195	18,000 00
Dauphin,	129,799	108,420	152,700	90,200 00

TABLE IV, continued.

County.	Population.	Wealth.	Industry.	Received 1919.
Delaware,	114,529	145,069	101,548	82,000 00
Elk,	35,121	12,216	50,392	21,000 00
Erie,	114,529	82,461	111,444	151,800 00
Fayette,	160,335	129,216	152,700	66,500 00
Forest,	9,162	3,817	.....	.....
Franklin,	58,790	48,865	25,195	15,000 00
Fulton,	9,162	3,054	.....	.....
Greene,	28,250	61,081	15,270	7,000 00
Huntingdon,	38,176	11,452	12,216	15,000 00
Indiana,	64,898	23,668	30,540	26,000 00
Jefferson,	62,608	19,087	40,446	86,600 00
Juniata,	14,506	6,871	1,527	.....
Lackawanna,	251,964	267,998	254,254	239,400 00
Lancaster,	160,335	151,177	141,015	76,000 00
Lawrence,	69,479	47,338	57,263	65,200 00
Lebanon,	58,790	61,844	50,392	26,000 00
Lehigh,	114,529	104,602	137,434	100,000 00
Luzerne,	335,952	243,565	263,416	211,400 00
Lycoming,	80,170	43,520	55,736	102,400 00
McKean,	47,338	25,195	61,081	39,000 00
Mercer,	76,353	57,263	61,081	53,000 00
Mifflin,	27,486	15,270	30,540	20,000 00
Monroe,	22,905	12,979	9,925	4,000 00
Montgomery,	167,976	173,320	132,089	169,000 00
Montour,	14,506	7,635	7,635	.....
Northampton,	122,164	100,021	203,092	43,000 00
Northumberland,	106,893	52,863	76,353	18,000 00
Perry,	23,668	12,979	3,817	.....
Philadelphia,	1,542,348	2,309,705	1,908,847	2,524,500 00
Pike,	7,635	3,054	.....	.....
Potter,	29,013	10,689	15,270	7,000 00
Schuylkill,	206,146	90,096	152,700	64,000 00
Snyder,	15,270	7,635	3,054	.....
Somerset,	66,425	28,250	50,392	14,000 00
Sullivan,	10,689	2,290	9,925	.....
Susquehanna,	37,412	8,398	7,635	4,000 00
Tioga,	41,993	22,141	15,270	.....
Union,	16,033	12,216	4,581	2,500 00
Venango,	54,973	28,939	50,392	46,000 00
Warren,	38,939	19,851	25,195	23,000 00
Washington,	137,434	171,787	101.548	58,400 00
Wayne,	29,013	16,797	12,979	.....
Westmoreland,	229,823	212,260	177,901	94,000 00
Wyoming,	15,270	5,345	4,581	.....
York,	129,799	87,806	132,089	48,000 00

XVI.

A. *The Factors of Need:*

The state board suggested two such factors—population and taxation. Both appear to me to be sound basis for the computation of the relative needs of communities for charitable assistance. But a third factor is of some consequence, namely, the industrial character of the community, measured, for example, by the number of persons engaged in hazardous occupations, such as manufacturing, mining and transportation.

Roughly, at least, the relative needs of the several communities of the state, for charitable assistance, can be measured by the relative percentages of the state's total population, wealth and industrial population. These have therefore been computed and are shown in Table I.

To compare the need, or the deserts, of the several counties, as measured by these three factors, separately, with the treatment they

have actually received from the state, the fund actually appropriated in 1919, in state subsidies, has been used as the basis of a hypothetical distribution of the fund among the counties on the basis of these three factors separately, and each compared with the amount actually appropriated by the state to institutions within the counties at the last session. The result is shown in Table Number IV.

The column headed "Population" represents a distribution of the fund of $7,635,389 appropriated in 1919, among the counties, exactly in proportion to population. That is, each county has been alloted a percentage of the total fund corresponding with its percentage of the population. Similarly, in the columns headed "wealth" and "industry," respectively, each county is allotted a percentage of the total subsidy fund, corresponding exactly to its percentage of the taxable "wealth" and the population engaged in hazardous "industry" of the whole state.

B. *Population;*

It will be noted that Allegheny county received, in 1919, an amount more than twice as great as its proportionate share according to population. Philadelphia received $1,000,000 more than its share based upon population. Beaver, next door to Allegheny, also received slightly more than its pro rata share, based upon population, while Armstrong, nearby, received scarcely one-eighth of its share, judging by this single factor. Cambria, on the other hand, judging by this factor alone, received just about a fair deal, as did Lackawanna, though the latter suffered somewhat in the shuffle, and Montgomery, which profited slightly. Fayette, Westmoreland, York, Washington, Susquehanna, Northampton, Northumberland and Luzerne are among other populous counties that appear to have received less than half what would have been alloted to them on the basis of population.

Chester, Clinton, Erie, Jefferson, Lycoming, on the other hand are among the favored communities, according to this test. It will be noted, also, that the seventeen counties which received nothing in 1919, would have received nearly $360,000, all told, if the fund had been distributed according to population.

C. *Wealth:*

A somewhat different picture is presented by the second column, although the discrepancies are still very marked. Of the communities that appear to be favored, by the test of population, Allegheny's excess is reduced, by the test of wealth, from 100% to about 33%; Philadelphia's excess is reduced from 65% to about 10%; Clinton's, Chester's, Erie's, Jefferson's, and Lycoming's largely increased, while Beaver's is somewhat increased. Blair, Bradford, Cambria, Clearfield, Crawford, Elk, Huntingdon, Lawrence, McKean, Mifflin, Venango, Warren, join the group of those whose appropriations exceed their relative needs by this test.

The needs of the counties who received nothing from the state, in 1919, are greatly reduced, judged by this test, totalling only $183,238. Of these counties, Carbon stands out as a conspicuous example of discrimination by both these tests.

D. *Industry:*

Consideration of the distribution of industrial population again alters the picture. Of the counties apparently favored by the test of wealth, all but Blair, Clearfield, Elk, McKean, Mifflin, Venango, Warren, still appear to enjoy an advantage. Montgomery again joins the favored group. The excess of Allegheny's and Philadelphia's appropriations are again increased, to 50% and 33%, respectively. No new counties enter the fortunate circle by this test.

The preponderantly rural character of the 17 neglected counties is shown by the still further reduction of their total of need, by this industrial test, three of them failing to show any perceptible need by this test, and all the rest, except Carbon, showing reduced need. Carbon's industrial character lifts it again into prominence in this table. The total need of these 17 communities is here indicated at $159,572, out of the total state subsidy fund of $7,635,389.

E. *The Factors Combined Equally:*

An interesting circumstance is the fact that by every one of these three tests, the counties of Allegheny, Beaver, Chester, Clinton, Erie, Jefferson, Lycoming and Philadelphia appear to enjoy a distinct advantage over the rest of the state, while by all three tests, again, such large and important counties as Berks, Butler, Carbon, Dauphin, Delaware, Fayette, Lancaster, Lebanon, Lehigh, Luzerne, Northampton, Northumberland, Schuylkill, Washington, Westmoreland and York appear to have suffered severely.

The natural assumption, therefore, that the three factors balance each other, or that the average of them would perhaps justify the treatment accorded to the various communities, is not sound. The average of these three factors would of course allow equal weight to all of them. The result, in fractions, is shown in the last column of Table I, and this decimal fraction, applied to the total subsidy fund, showing what each county would receive of the 1919 fund, if distributed by a plan giving equal weight to all three factors, is given in Table VI.

F. *The Factors Combined with Differing Weights:—*

A more satisfactory test is probably afforded if, instead of considering the factors equally, greater weight is accorded to the fundamental factor of population, and less weight to the other two. An illustration of this method of computation is given in Table II, in which one-half the fund is apportioned in accordance with population; one-quarter in proportion to welath, and one-quarter in proportion to industrial population. Each county's portion, under each allotment, is here reduced to a percentage of the total subsidy fund, and the sum of these percentages, shown in the right-hand column, is the percentage of the whole fund to which each county is entitled under this plan. TABLE III shows a comparison between the percentage and the amount which each county received under the appropriations of 1919, and the percentage and amount which each would receive under the system here outlined.

Attention is called to the fact that in both these tables, it again appears that the counties of Allegheny, Chester, Clinton, Erie, Jefferson, Lycoming, and Philadelphia appear to receive an excess over

their rightful share by these tests, while Bradford, Cambria, Crawford, Lawrence, Montgomery, also receive somewhat more than proportionate allowances. Under Table VI, $251,964, which would have been allotted to the seventeen counties now receiving nothing, is distributed elsewhere, and under Table III, this amount is $272,740. In addition to this amount, however, the seven counties mentioned above as particular beneficiaries of the present apportionment, would have yielded nearly $1,500,000 to their less fortunate fellows, under the proposal illustrated in Table VI, and almost $1,600,000 under the plan outlined in Table III.

It is clear that no reasonable combination of these three factors determining and measuring the need of the various counties of the state, accounts for the present irregular distribution of state aid.

Out of an excess of caution, one further effort to fit the present distribution to some reasonable pattern of need, has been made in Table VII, in which the factor of "taxable wealth" has been disrefarded, and the factors of "population" and "industrial population" have been given equal weight in determining the need of the counties for the state's assistance. The same story is told here as in the other tables. A small group of counties apparently profit from the state's generosity out of proportion to their need, as disclosed by these two factors, while others suffer disadvantages as compared with their fellows.

G. *Some Individual Instances of Irregularities:—*

Jefferson county furnishes one of the most enlightening illustrations of the inequitable operation of the present system. Its apparent undue advantage in the apportionment of the subsidy funds dates back to 1911, when the appropriation to one of the hospitals in Punxsutawney was largely increased, and the other was put upon the subsidy list for the first time, with an initial appropriation of $18,000. In that year, one of the influential members of the house appropriations committee was a member from Jefferson county. In the session of 1913, this member became chairman of the appropriations committee. As the representative of Jefferson county he introduced bills asking appropriations to these hospitals. Previously according to law, the hospitals had sought recommendations from the state board, one for $50,000, the other for $28,000. The board recommended to the first, $35,000, to the second $19,200. The bills, as introduced by the member from Jefferson, as is customary in such cases, carried, not the amounts of the board's recommendations, but the amounts of the original applications, respectively.

They were among the first bills to be reported to the house. The member from Jefferson, acting as chairman of the appropriations committee, reported them favorably, carrying, respectively, $53,000 and $35,000, actually considerably more in each case than the institutions had dared to ask, originally, from the board of public charities. Despite vigorous opposition from the floor, on the part of a little group of independent members, they were passed by the legislature in this form. Surely, in this instance, there is abundant evidence of the truth of the statement of the secretary of the state board twenty years ago, that "the institution with great influence is able, under the present system to secure a much larger appropriation than is possible to institutions doing the same service but not possessing the same influence."

It is significant that, after the special influence which accounted for Jefferson county's advantage, at first, was removed, the inertia of the present system still operated to maintain this advantage. Jefferson county, in 1919, as in 1913, still receives special consideration.

In this connection, a study of Allegheny county's situation is equally interesting. The tables show that this county is highly favored, according to any equitable test of its rightful claims to state aid. We find its excess of appropriations to be nearly 60%, according to the tests outlined in Table III.

It is interesting to note, therefore, that from 1909, to 1919, inclusive, Allegheny county has had the remarkable distinction, at each session of the legislature, of having one of its representatives act as chairman of the committee on appropriations in either the house or senate, and for several of these sessons, both these chairmanships were in the hands of Allegheny county members. In the year 1911, when both chairmen were representatives of Allegheny county, 14 out of the 44 institutions newly added to the subsidy list, were situated in Allegheny county.

H. *Comparison of Districts Larger than Counties:—*

While the county is the natural unit of comparison, both because of the general social unity of counties in Pennsylvania, with some exceptions, and because most of the local social activities, such as the care of the poor, health administration, etc., are for the most part conducted on the county basis, it is desirable to set at rest any doubts of the accuracy of these conclusions by comparing so-called "natural population districts," overlapping county lines.

Two such districts at once suggest themselves, namely those immediately surroundng the two great cities of Philadelphia and Pittsburgh. The institutions in these two cities undoubtedly serve areas beyond their own borders in larger measure than institutions elsewhere in the state. They are railroad centers, as well as business centers for the surrounding communities, and are therefore accessible easily to a wide territory.

In the "Pittsburgh" district should certainly be included all the counties that immediately adjoin it and in addition, Indiana, Lawrence and Greene. The comparison of the needs of this metropolitan territory, compared with its share of the present subsidy fund, is suggestive.

Counties.	% Pop.	% Wealth.	% Ind.	% Need.*	% Subs.†	Amt. Need.*	Amt. Subs.†
Allegheny,	.1390	.2225	.1766	.1713	.2734	$1,308,730	$2,088,089
Armstrong,	.0087	.0028	.0036	.0060	.0010	45,840	8,000
Beaver,	.0100	.0086	.0086	.0093	.0110	71,050	84,000
Butler,	.0094	.0053	.0055	.0074	.0026	56,535	20,000
Fayette,	.0210	.0169	.0200	.0097	.0087	150,510	66,500
Greene,	.0037	.0080	.0020	.0049	.0009	37,440	7,000
Indiana,	.0085	.0031	.0040	.0060	.0033	45,840	26,000
Lawrence,	.0091	.0062	.0075	.0080	.0085	61,120	65,200
Washington,	.0180	.0225	.0133	.0170	.0076	129,880	58,400
Westmoreland,	.0301	.0278	0.233	.0278	.0123	212,390	94,000
Total,	.2575	.3241	.2644	.2754	.3293	$2,119,335	$2,517,189

*See Table II.
†Appropriations of 1919.

From this table, it will be seen that even taken as a whole, including large counties that apparently suffer individually, in their subsidy allotments, compared with others elsewhere in the state, the Pittsburgh district still receives substantially a fifth more than it is entitled to receive, judged by the test of population, wealth or industrial population. In fact, Allegheny county alone receives almost enough to care for all the needs of these counties, relatively to the rest of the state, judged by the same tests. Allegheny county's apparent excess, therefore, is not accounted for by the needs of surrounding territory not otherwise provided for by the state.

The Philadelphia district is another illuminating illustration. Includng the counties that adjoin Philadelphia, within the "Philadelphia district," the comparison results as follows:

Counties.	% Pop.	% Wealth.	% Ind.	% Need.*	% Subs.†	Amt. Need.*	Amt. Subs.†
Philadelphia,	.218	.3025	.2500	.2481	.3306	$1,895,725	$2,524,500
Bucks,	.0098	.0082	.0056	.0084	.0051	64,175	39,000
Chester,	.0140	.0135	.0086	.0125	.0183	95,500	140,400
Delaware,	.0150	.0154	.0133	.0147	.0107	112,310	82,000
Montgomery,	.0220	.0227	.0173	.0210	.0221	160,440	169,000
Total,	.2788	.3623	.2948	.3047	.3868	$2,328,150	$2,954,900

*See Table II.
†Appropriations of 1919.

Again, we find the metropolitan district, even including two such large counties as Delaware and Bucks, which are apparently sufferers in the present distribution, receiving an excess of appropriations, relatively to their population and wealth and industrial population, equal to more than a quarter.

If to this first group are added the counties one degree further removed geographically, that is, next adjoining this group, including Northampton, Lehigh, Berks, and Lancaster, the following comparison results:

Counties.	% Pop.	% Wealth.	% Ind.	% Need.*	% Subs.†	Amt. Need.*	Amt. Subs.†
First group,	.2788	.3623	.2948	.3047	.3868	$2,328,150	$2,954,000
Berks,	.0230	.0190	.0253	.0226	.0180	172,360	137,500
Lancaster,	.0210	.0198	.0186	.0201	.0099	153,565	76,000
Lehigh,	.0150	.0137	.0180	.0154	.0130	117,650	100,000
Northampton,	.0160	.0131	.0266	.0179	.0056	136,750	43,000
Total,	.3538	.4279	.3835	.3807	.4333	$2,908,775	$3,311,400

*See Table II.
†Appropriations of 1919.

Outside of Philadelphia, in this territory, there are 20 subsidized hospitals, at least one in every county; 19 charitable homes, at least one in every county except one; and 1 sanatorium for tuberculosis. The pressure upon the Philadelphia subsized institutions ought not therefore, to be excessive, yet the subsidies to Philadelphia institutions alone exceeds the apparent need of the first group of counties combined, while the total subsidies to all these counties in the Phila-

delphia district exceed the apparent need, relatively to the whole state, by nearly 15%, judging of that need by their relative populations, wealth and industrial population.

Other similar groupings of counties, by natural geographical centers disclose discrepancies of a different kind. For example, taking Harrisburg as the center of one group, including the counties which immediately adjoin it, excepting Lancaster (which has been included in the Philadelphia district) Schuylkill and Northumberland, which are more closely related to the mining region.

Counties.	% Pop.	% Wealth.	% Ind.	% Need.*	% Subs.†	Amt. Need.*	Amt. Subs.†
Adams,	.0045	.0025	.0001	.0029	----------	$22,150	----------
Cumberland,	.0070	.0052	.0033	.0056	.0023	42,785	$18,000
Dauphin,	.0170	.0142	.0200	.0170	.0118	129,880	90,200
Franklin,	.0077	.0064	.0033	.0063	.0019	48,130	15,000
Fulton,	.0012	.0004	----------	.0007	----------	5,350	----------
Juniata,	.0019	.0009	.0002	.0013	----------	9,930	----------
Lebanon,	.0077	.0081	.0066	.0075	.0033	57,300	26,000
Mifflin,	.0036	.0020	.0040	.0033	.0026	25,210	20,000
Perry,	.0031	.0011	.0005	.0021	----------	16,045	----------
Snyder,	.0020	.0010	.0004	.0014	----------	10,700	----------
Union,	.0021	.0016	.0006	.0016	.0003	12,225	2,500
York,	.0170	.0115	.0173	.0157	.0062	119,950	48,000
Total,	.0748	.0549	.0563	.0654	.0284	$499,575	$219,700

*See Table II.
†Appropriations of 1919.

Here is the great central district of the state east of the mountains, with a population including more than 7% of that of the whole state, with more than 5% of the taxable wealth of the state, and with more than 5% of the state's population engaged in hazardous industries, which receives but little more than 2-¾% of the state's charitable aid, or much less than half the amount it is entitled to under these fair tests of its needs.

The mining region just north and east of Harrisburg is another compact and contiguous teritory which will bear analysis. With Luzerne county as the center, a district extending from the northern border to the limits of the Harrisburg and Philadelphia districts on the south, has been taken for comparison in the following table:

Counties.	% Pop.	% Wealth.	% Ind.	% Need.*	% Subs.†	Amt. Need.*	Amt. Subs.†
Luzerne,	.0440	.0319	.0345	.0386	.0276	$294,900	$211,400
Lackawanna,	.0330	.0351	.0333	.0336	.0313	256,700	239,400
Monroe,	.0030	.0017	.0013	.0023	.0005	17,570	4,000
Pike,	.0010	.0004	----------	.0006	----------	4,585	----------
Wayne,	.0038	.0022	.0017	.0029	----------	22,150	----------
Susquehanna,	.0049	.0011	.0010	.0030	.0005	22,920	4,000
Bradford,	.0070	.0042	.0021	.0050	.0052	38,200	40,000
Wyoming,	.0020	.0007	.0006	.0013	----------	9,930	----------
Sullivan,	.0014	.0003	.0013	.0011	----------	8,400	----------
Columbia,	.0063	.0027	.0053	.0052	.0027	39,370	21,000
Montour,	.0019	.0010	.0010	.0015	----------	11,460	----------
Northumberland,	.0140	.0069	.0100	.0122	.0023	93,210	18,000
Schuylkill,	.0270	.0118	.0200	.0215	.0083	164,260	64,000
Carbon,	.0069	.0052	.0120	.0078	----------	59,590	----------
Total,	.1562	.1052	.1241	.1366	.0784	$1,043,245	$601,800

*See Table II.
†Appropriations of 1919.

Another natural district is that lying at the north and including six rural and mining counties, as follows:

Counties.	% Pop.	% Wealth.	% Ind.	% Need.*	% Subs.†	Amt. Need.*	Amt. Subs.†
Lycoming,	.0150	.0047	.0073	.0083	.0134	$63,410	$102,400
Tioga,	.0055	.0029	.0020	.0040	----------	30,560	----------
Potter,	.0038	.0014	.0020	.0058	.0009	44,310	7,000
Clinton,	.0041	.0021	.0043	.0037	.0062	28,270	48,000
McKean,	.0062	.0033	.0080	.0059	.0051	45,075	39,000
Cameron,	.0009	.0006	.0006	.0007	----------	5,350	----------
Elk,	.0046	.0016	.0066	.0044	.0027	33,615	21,000
Total,	.0356	.0166	.0308	.0328	.0283	$250,590	$217,400

*See Table II.
†Appropriations of 1919.

Another natural district is that centering in Jefferson County:

Counties.	% Pop.	% Wealth.	% Ind.	% Need.*	% Subs.†	Amt. Need.*	Amt. Subs.†
Jefferson,	.0082	.0025	.0053	.0061	.0113	$46,600	$86,600
Clearfield,	.0120	.0040	.0080	.0090	.0069	68,750	53,000
Centre,	.0056	.0025	.0020	.0040	.0026	30,560	20,000
Huntingdon,	.0050	.0015	.0016	.0033	.0019	25,210	15,000
Bedford,	.0050	.0019	.0010	.0032	----------	24,450	----------
Blair,	.0140	.0086	.0140	.0127	.0121	97,039	93,000
Cambria,	.0210	.0086	.0180	.0172	.0172	131,400	157,500
Somerset,	.0087	.0037	.0066	.0069	.0018	52,715	14,000
Total,	.0795	.0333	.0565	.0624	.0538	$476,724	$439,100

*See Table II.
†Appropriations of 1919.

Finally, we shall examine the northwestern section of the state, including Erie, Warren, Crawford, Forest, Clarion, Venango and Mercer counties.

Counties.	% Pop.	% Wealth.	% Ind.	% Need.*	% Subs.†	Amt. Need.*	Amt. Subs.†
Erie,	.0091	.0108	.0145	.0139	.0198	$106,200	$151,800
Warren,	.0051	.0026	.0033	.0040	.0030	30,560	23,000
Crawford,	.0080	.0044	.0033	.0059	.0072	45,075	55,000
Forest,	.0012	.0005	.0010	.0010	----------	7,640	----------
Clarion,	.0048	.0018	.0013	.0032	----------	24,450	----------
Venango,	.0072	.0051	.0066	.0065	.0060	49,660	46,000
Mercer,	.0100	.0075	.0080	.0089	.0069	68,000	53,000
Total,	.0454	.0327	.0380	.0434	.0429	$331,585	$328,800

*See Table II.
†Appropriations of 1919.

I. *The State Hospitals in Mining Regions:—*

The apparent discrepancies between these districts are, of course, somewhat modified, but by no means eliminated, by the appropria-

tions made by the state to its own ten state hospitals, aggregating, in 1919, $1,346,670. In order to evaluate this modification for our purpose, it is necessary to add to the apparent need of the several districts, the proportionate amounts of the appropriations to the state hospitals, to which they would be entitled, if this fund were distributed on the same basis as the proposed distribution of the subsidy fund, that is in accordance with population, taxable wealth and industrial population. We must also add to the actual amounts received by them, in the shape of subsidies, the amounts they received for the maintenance of the state hospitals in their respective districts.

The following table shows the results of this procedure:

District.	% Need.*	Amt. Need (Subsidy)*	Amt. Need (State (Hospital).	Total Need.	Total Appropriations.
Philadelphia,	.3807	$2,908,775	$512,677	$3,421,452	$3,311,400
Pittsburgh,	.2754	2,119,335	370,872	2,490,207	2,553,739
Harrisburg,	.0748	499,575	100,731	600,306	219,700
Anthracite,	.1366	1,043,245	183,955	1,227,200	1,721,421
Northern,	.0328	250,570	44,171	294,741	331,900
West Central,	.0624	476,724	84,032	500,756	493,100
Northwest,	.0434	331,585	58,445	390,030	350,800
Total,	1.0061	$7,629,809	$1,354,883	$8,984,692	$8,982,060
Real total,	1.00	$7,635,389.20	$1,346,670	$8,982,059	$8,982,059

*See Table II.

District.	Excess of Appropriations.*		Deficiency of Appropriations.†	
	Amount.	%	Amount.	%
Philadelphia,	------	------	$110,052	3.21
Pittsburgh,	$63,532	2.55	------	------
Central,	------	------	380,606	63.40
Anthracite,	494,221	40.27	------	------
Northern,	37,159	12.6	------	------
West Central,	------	------	67,656	12.06
Northwest,	------	------	39,230	10.05

*Excess of appropriations, both in subsidies and to State Hospitals, compared with amount which district would receive, if the whole fund were distributed according to population, wealth and industry. See Table II.
†Deficiency of appropriations compared on the same basis.

We have arrived at a mathematical demonstration that, judged by population, wealth aand industrial population, the distribution of the state's charity fund, whether in the shape of subsidies alone, or including, also, the amounts appropriated to the state's own medical hospitals, in particular localities, among the various communities of the state, is neither logical nor equitable, nor properly proportional to any uniform factor of need.

XI-A.

Pennsylvania is easily entitled to leadership in promoting and retaining the subsidy policy. No other commonwealth approaches

our own in the amount of money which it distributes in this way, nor in the number and variety of social agencies which it thus supports or assists.

Table IX presents a reasonably clear and accurate picture of the present policies of all the states on this subject. From it can be drawn at once certa n definite facts:

Twenty states contribute nothing whatsoever to charitable or benevolent agencies not under the absolute control of the state. In addition, four others really belong with this group, since North Dakota, which seems to have made appropriations occasionally to one or two institutions, is prohibited from dong so by its constitution, as is Oklahoma, which has used this means, purely as a temporary expedient for caring for its insane pending the completion of state hospitals; while Florida grants aid occasionally to one children's agency, and Mississippi to three hospitals which are now being taken under state control.

Seventeen states grant aid to private institutions sparingly—to few institutions, or in small amounts, or both. Of these, West Virginia, our next door neighbor, has recently taken steps to distribute this fund under the absolute control of the state board of charities, rather than by legislative appropriations.

This leaves seven states that place few institutions upon their grants, including, besides Pennsylvania, the states of Connecticut, Kansas, Maine, Maryland, New Mexico and Rhode Island. Of these. Pennsylvania grants to private institutions five times as much as all the others combined. Furthermore, Kansas, which formerly followed the same system as Pennsylvania, now appropriates its state aid in one lump sum to the state board of control, which distributes it at discretion, or on contract, to institutions conforming to certain standards. Maryland has begun to modify its method of subsidizing institutions by placing it upon a per capita basis, including it in the budget, and sharing the burden on a fifty-fifty basis with the local community. This is undoubtedly a step toward the abandonment of the subsidy policy in that state.

Pennsylvania, therefore, is one of five states, four of them comparatively small in area and population, and all but one in the northeastern section of the country, who still cling to indiscriminate and general state grants to private agencies, as a method of discharging the state's responsibilities to its dependents.

A glance at the Table IX discloses the fact that of the 24 states that grant state aid in any amount, nine contribute only to child-caring agencies, or to institutions closely allied to them, such as juvenile reformatories, tuberculosis sanatoria or preventoria, home for fallen women and their babies, and the like. Only ten contribute anything to general hospitals. For the most part state aid is restricted to the groups usually regarded as state responsibilities. Nine states grant aid for tuberculosis work; eleven for the blind; six for the mentally defective; six for reformatories; ten for fallen women—a work closely alied both to delinquency and to child dependency; ten for the deaf.

On the other hand, only three subsidize day nurseries; four subsidize general and miscellaneous charities; four assist homes for veterans and their wives; three work for incurables; and two for epileptics. Only four states grant aid, at all, to homes for adults,

and all these are in the group of commonwealths that apparently discriminate not at all between state and local responsibilities in this field, distributing their aid to all applicants alike.

Not all the states that refrain from accepting the subsidy policy are restrained by constitutional provisions, but many of them are. Included in the number are New Jersey, Kentucky, Oklahoma, Arizona, Illinois, Missouri, Texas, Colorado, Georgia, Louisiana, Montana and Wyoming. The recent New Mexico constitution forbids general appropriations, to private associations, except for the indigent sick, and California excepts dependent children and aged indigents from the operation of a general prohibitive clause. New York prohibits all such appropriations except those to institutions for the blind, the deaf and dumb and juvenile delinquents, and Virginia permits appropriations only to juvenile reformatories. Massachusetts has recently revised its constitution, to prohibit such appropriations, except to hospitals and institutions for the deaf, blind and dumb, on a per capita, cost basis. The principal contest in the constitutional convention was over sectarian appropriations, which were finally absolutely eliminated, in unmistakable terms.

The inevitable conclusion of this experience of other commonwealths is that the subsidy policy is not in favor elsewhere. While that is not necessarily a satisfactory reason for abandoning it in Pennsylvania, it raises the presumption against it, and throws the burden of proof upon its advocates.

TABLE V.

Showing relation between institutions, requests to board, the board's recommendations, the legislature's appropriations and the appropriations approved by the governor, 1919.

County.	Application.	Recommendation.	Legislature.	Governor.
Adams,	.....	.....	.....	.....
Allegheny,	$3,302,309 20	$2,163,189 20	$2,115,089 20	$2,088,089 00
Armstrong,	16,000 00	10,600 00	8,000 00	8,000 00
Beaver,	131,000 00	89,000 00	84,000 00	62,000 00
Bedford,	.....	.....	.....	.....
Berks,	192,000 00	150,000 00	139,500 00	137,500 00
Blair,	159,000 00	93,000 00	94,000 00	93,000 00
Bradford,	60,000 00	46,000 00	40,000 00	40,000 00
Bucks,	90,000 00	39,000 00	40,000 00	39,000 00
Butler,	35,000 00	20,000 00	20,000 00	20,000 00
Cambria,	227,000 00	158,000 00	157,500 00	153,000 00
Cameron,	.....	.....	.....	.....
Carbon,	.....	.....	.....	.....
Centre,	32,500 00	20,000 00	20,000 00	20,000 00
Chester,	221,000 00	142,400 00	140,400 00	140,400 00
Clarion,	.....	.....	.....	.....
Clearfield,	106,340 00	49,000 00	53,000 00	63,000 00
Clinton,	63,000 00	49,000 00	48,000 00	48,000 00
Columbia,	27,000 00	21,700 00	21,000 00	21,000 00
Crawford,	87,116 00	59,966 00	55,000 00	55,000 00
Cumberland,	30,000 00	18,000 00	22,500 00	18,000 00
Dauphin,	178,800 00	74,600 00	92,200 00	90,200 00
Delaware,	138,000 00	86,000 00	82,000 00	82,000 00
Elk,	22,000 00	21,000 00	21,000 00	21,000 00
Erie,	275,800 00	174,800 00	151,800 00	151,800 00
Fayette,	113,000 00	65,500 00	68,000 00	66,500 00
Forest,	.....	.....	.....	.....
Franklin,	19,500 00	15,000 00	15,000 00	15,000 00
Fulton,	.....	.....	.....	.....
Greene,	10,000 00	9,000 00	7,000 00	7,000 00

TABLE V.—Continued.

County.	Application.	Recommendation.	Legislature.	Governor.
Huntingdon,	16,000 00	14,400 00	15,000 00	15,000 00
Indiana,	45,000 00	26,000 00	26,000 00	26,000 00
Jefferson,	102,000 00	86,600 00	86,600 00	86,600 00
Juniata,	.....	.....	.....	.....
Lackawanna,	462,950 00	226,800 00	239,200 00	239,400 00
Lancaster,	100,500 00	77,000 00	76,000 00	76,000 00
Lawrence,	101,000 00	55,800 00	65,000 00	56,000 00
Lebanon,	74,000 00	26,000 00	26,000 00	26,000 00
Lehigh,	260,000 00	134,600 00	106,000 00	100,000 00
Luzerne,	549,000 00	287,400 00	211,400 00	211,400 00
Lycoming,	136,900 00	98,300 00	102,400 00	102,400 00
McKean,	51,750 000	39,000 00	41,000 00	39,000 00
Mercer,	72,000 00	51,000 00	53,000 00	53,000 00
Mifflin,	29,700 00	20,000 00	20,000 00	20,000 00
Monroe,	27,000 00	4,000 00	4,000 00	4,000 00
Montgomery,	192,000 00	119.000 00	171,000 00	169.000 00
Montour,	.....	.....	.....	.....
Northampton,	46,000 00	43,000 00	44,000 00	43,000 00
Northumberland,	18,000 00	18,000 00	18,000 00	18,000 00
Perry,	.....	.....	.....	.....
Philadelphia,	4,879,000 00	2,809,300 00	2,552,700 00	2,524,500 00
Pike,	.....	.....	.....	.....
Potter,	7,000 00	5,000 00	7,000 00	7,000 00
Schuylkill,	120,000 00	56,000 00	64,000 00	64,000 00
Snyder,	.....	.....	.....	.....
Somerset,	40,000 00	16,600 00	14,000 00	14,000 00
Sullivan,	.....	.....	.....	.....
Susquehanna,	6,000 00	3,400 00	4,000 00	4,000 00
Tioga,	.....	.....	.....	.....
Union,	5,000 00	4,000 00	2,500 00	2,500 00
Venango,	61,500 00	47,800 00	46,000 00	46,000 00
Warren,	29,000 00	23,000 00	23,000 00	23,000 00
Washington,	151,000 00	55,400 00	59,400 00	58,400 00
Wayne,	.....	.....	.....	.....
Westmoreland,	146,000 00	94,000 00	94,000 00	94,000 00
Wyoming,	.....	.....	.....	.....
York,	57,500 00	48,000 00	48,000 00	48,000 00

TABLE VI.

Showing comparison, for each county, of amount and percentage of the state's subsidy fund received in the appropriation of 1919, and the amount and percentage which would have been received if the fund had been distributed in proportion to population, wealth and industry, jointly and equally considered; that is, if one-third had been distributed in proportion to population, one-third in proportion to wealth, and one-third in proportion to the number of persons engaged in hazardous industry.

County.	Average 1, 2, 3 %	Amount.	Subsidy %	Amount.
Adams,	.0024	$18,324	.....	.....
Allegheny,	.1803	1,376,660	.2734	$2,088,089
Armstrong,	.0050	38,177	.0010	8,000
Beaver,	.0091	69,482	.0110	84,000
Bedford,	.0026	19,851	.....	.....
Berks,	.0224	171,031	.018	137,500
Blair,	.0122	93,152	.0121	93,000
Bradford,	.0044	33,594	.0052	40,000
Bucks,	.0079	60,320	.0051	39,000
Butler,	.0067	51,157	.0026	20,000

TABLE VI—Continued.

County.	Average 1, 2, 3 %	Amount.	Subsidy %	Amount.
Cambria,	.0159	121,403	.0206	131,400
Cameron,	.0021	16,035	.....	.....
Carbon,	.0080	61,083	.....	.....
Centre,	.0034	25,960	.0026	20,000
Chester,	.0120	91,625	.0183	140,400
Clarion,	.0026	19,851	.....	.....
Clearfield,	.0080	61,083	.0069	53,000
Clinton	.0035	26,724	.0062	48,000
Columbia,	.0048	36,650	.0027	21,000
Crawford,	.0052	39,704	.0072	55,000
Cumberland,	.0052	39,704	.0023	18,000
Dauphin,	.0171	130,565	.0118	90,200
Delaware,	.0149	113,767	.0107	82,000
Elk,	.0043	32,833	.0027	21,000
Erie,	.0135	103,078	.0198	151,800
Fayette,	.0193	147,364	.0087	66,500
Forest,	.0009	6,872	.....	.....
Franklin,	.0077	58,793	.0019	15,000
Fulton,	.0005	3,818	.....	.....
Greene,	.0046	35,123	.0009	7,000
Huntingdon,	.0027	20,615	.0019	15,000
Indiana,	.0052	39,704	.0033	26,000
Jefferson,	.0053	40,468	.0113	86,600
Juniata,	.0010	7,635	.....	.....
Lackawanna,	.0338	258,076	.0313	239,400
Lancaster,	.0198	151,181	.0099	76,000
Lawrence,	.0076	58,029	.0085	65,200
Lebanon,	.0075	57,266	.0033	26,000
Lehigh,	.0156	119,112	.0130	100,000
Luzerne,	.0368	283,982	.0276	211,400
Lycoming,	.0075	57,266	.0134	102,400
McKean,	.0058	44,285	.0051	39,000
Mercer,	.0085	64,901	.0069	53,000
Mifflin,	.0032	24,433	.0026	20,000
Monroe,	.0020	15,270	.0005	4,000
Montgomery,	.0207	158,053	.0221	169,000
Montour,	.0013	9,926	.....	.....
Northampton,	.0186	142,018	.0056	43,000
Northumberland,	.0103	78,645	.0023	18,000
Perry,	.0018	13,743	.....	.....
Philadelphia,	.2568	1,960,767	.3306	2,524,500
Pike,	.0005	3,818	.....	.....
Potter,	.0024	18,324	.0009	7,000
Schuylkill,	.0196	149,654	.0083	64,000
Snyder,	.0011	8,399	.....	.....
Somerset,	.0063	48,103	.0018	14,000
Sullivan,	.0010	7,635	.....	.....
Susquehanna,	.0023	17,562	.0005	4,000
Tioga,	.0035	26,724	.....	.....
Union,	.0014	10,689	.0003	2,500
Venango,	.0063	48,103	.0060	46,000
Warren,	.0051	38,941	.0030	23,000
Washington,	.0179	136,674	.0076	58,400
Wayne,	.0026	19,851	.....	.....
Westmoreland,	.0271	206,920	.0123	94,000
Wyoming,	.0011	8,399	.....	.....
York,	.0153	116,822	.0062	48,000

TABLE VII.

Showing what each county would receive under an allotment of the total 1919 subsidy fund, if population and industrial population were given equal weight in the distribution, in comparison with present appropriations.

County.	% Total. Present	Amount. Allotment.	% Total. Proposed	Amount. Allotment.
Adams,	.....	.....	.0023	$17,562
Allegheny,	.2734	$2,088,089	.1600	1,221,662
Armstrong,	.0010	8,000	.0061	46,576
Beaver,	.0110	84,000	.0093	71,009
Bedford,	.....	.....	.0030	22,906
Berks,	.0184	137,500	.0241	184,013
Blair,	.0121	93,000	.0140	106,095
Bradford,	.0052	40,000	.0043	32,832
Bucks,	.0051	39,000	.0073	55,739
Butler,	.0026	20,000	.0076	58,029
Cambria,	.0206	157,500	.0195	148,890
Cameron,	.....	.....	.0006	4,581
Carbon,	.....	.....	.0094	71,772
Centre,	.0026	20,000	.0038	29,014
Chester,	.0183	140,400	.011	86,279
Clarion,	.....	.....	.0030	22,906
Clearfield,	.0069	53,000	.0100	76,354
Clinton,	.0062	48,000	.0042	32,069
Columbia,	.0027	21,000	.0058	44,258
Crawford,	.0072	55,000	.0056	42,758
Cumberland,	.0023	18,000	.0051	38,941
Dauphin,	.0118	90,200	.0185	141,255
Delaware,	.0107	82,000	.0141	107,659
Elk,	.0027	21,000	.0056	42,758
Erie,	.0198	151,800	.0148	113,003
Fayette,	.0087	66,500	.0205	156,525
Forest,	.....	.....	.0011	8,399
Franklin,	.0019	15,000	.0055	41,994
Fulton,	.....	.....	.0006	4,581
Greene,	.0009	7,000	.0038	29,014
Huntingdon,	.0019	15,000	.0033	25,197
Indiana,	.0033	26,000	.0062	47,339
Jefferson,	.0113	86,600	.0067	51,157
Juniata,	.....	.....	.0019	14,507
Lackawanna,	.0313	239,400	.0331	252,732
Lancaster,	.0099	76,000	.0198	151,180
Lawrence,	.0085	65,200	.0083	63,373
Lebanon,	.0033	26,000	.0071	54,212
Lehigh,	.0130	100,000	.0165	125,984
Lycoming,	.0134	102,400	.0089	67,955
McKean,	.0051	39,000	.0071	54,212
Mercer,	.0069	53,000	.0090	68,719
Mifflin,	.0026	20,000	.0038	29,014
Monroe,	.0005	4,000	.0021	16,035
Montgomery,	.0221	169,000	.0196	149,654
Montour,	.....	.....	.0014	10,689
Northampton,	.0056	43,000	.0213	162,633
Northumberland,	.0023	18,000	.0120	91,625
Perry,	.....	.....	.0018	13,743
Philadelphia,	.3306	2,524,500	.2340	1,786,682
Pike,	.....	.....	.0005	3,818
Potter,	.0009	7,000	.0029	22,143
Schuylkill,	.0083	64,000	.0225	171,797
Snyder,	.....	.....	.0012	9,162
Somerset,	.0018	14,000	.0076	58,029
Sullivan,	.....	.....	.0013	9,925
Susquehanna,	.0005	4,000	.0029	22,195
Tioga,	.....	.....	.0037	28,254
Union,	.0003	2,500	.0013	9,926
Venango,	.0060	46,000	.0069	52,684
Warren,	.0030	23,000	.0042	32,069
Washington,	.0076	58,400	.0156	119,112
Wayne,	.....	.....	.0027	20,615
Westmoreland,	.0123	94,000	.0267	203,864
Wyoming,	.....	.....	.0013	9,926
York,	.0062	48,000	.0171	130,566

TABLE VIII.

States.	State Subsidy.	Kind of Subsidy.	Local Subsidy.	Kind of Subsidy.	Tax Exempt.
Alabama,	-------	------	Yes		Yes
Arizona,	C, T,	P. C.	No	----	Yes
Arkansas,	-------	------	No	----	Yes
California,	C, T,	P. C.	Yes		No
Colorado,	-------	------	Yes		Yes
Connecticut,	B, C, D, F, H, S, V,	L & P. C.	No	----	Yes
Delaware,	B, C, D, M, T,	L & P. C.	Yes		Yes
Florida,	C	------	No	----	Yes
Georgia,	-------	------	?		Yes
Idaho,	C	L	Yes		Yes
Illinois,	-------	------	Yes		Yes
Indiana,	-------	------	Yes		Yes
Iowa,	-------	------	Yes		Yes
Kansas,	A, C, F, G, H, T,	L*	Yes		Yes
Kentucky,	C, I,	L	Yes		Yes
Louisiana,	-------	------	Yes		Yes
Maine,	A, B, C, D, F, H, T,	L	Yes		Yes
Maryland,	A, B, C, D, E, F, G, H, I, M, N, R, S, T, V,	L	Yes		Yes
Massachusetts,	B, D, H, V,	L & P. C.	Yes		Yes
Michigan,	-------	------	Yes		Yes
Minnesota,	-------	------	Yes		Yes
Mississippi,	H	L	Yes		Yes
Missouri,	-------	------	Yes		Yes
Montana,	-------	------	Yes		Yes
Nebraska,	-------	------	Yes		Yes
Nevada,	F	L	No		Yes
New Hampshire,	B, D, T,	L	Yes		Yes
New Jersey,	B, M,	P. C.	Yes		Yes
New Mexico,	C, H, R,	L	Yes		Yes
New York,	B, D, R,				
North Carolina,	C, R,	L & P. C.	Yes		Yes
North Dakota,	(?) C, B, F,	L	Yes		Yes
Ohio,	-------	L & P. C.	Yes		Yes
Oklahoma,	C, M,†	------	Yes		Yes
Oregon,	C, F,	L	No		Yes
Pennsylvania,	A, B, C, D, E, F, G, H, I, M, N, R, S, T, V,	L & P. C.	Yes		Yes
Rhode Island,	B, C, D, F, G, H, P, S, T,	L & P. C.	Yes		Yes
South Carolina,	-------	------	Yes		Yes
South Dakota,	-------	------	No	----	Yes
Tennessee,	-------	------	Yes		Yes
Texas,	-------	------	Yes		Yes
Utah,	C	L	Yes		Yes
Vermont,	D, M,	L	Yes		Yes
Virginia,	R,	P. C.	Yes		Yes
Washington,	F,	L	No(?)	----	Yes
West Virginia,	C, H,	L	No		Yes
Wisconsin,	-------	------	Yes(?)		Yes
Wyoming,	-------	------	No	----	Yes

*$15,000 appropriated in lump sum to state board of control, which then distributes the amount, in lump sums, not to exceed $500 each, among many institutions, "according to need and free service rendered."

†One appropriation made to an orphanage, despite constitutional prohibition, to tide over emergency. The state pays private agencies for care of insane, pending only completion of state institutions.

‡L—Lump sum. P. C.—Per capita.

A—Home for adults.

B—Home or society for care of blind.

C—Institution or society for care of children.

D—Institutions or society for care of deaf and dumb.

E—Institution for epileptics.

F—Home or society for care of fallen women and their children.

G—General institutions or organizations of charity, such as associated charities, relief societies, etc., as well as miscellaneous homes, etc.

H—Hospitals, general or special.

I—Homes or societies for care of incurables.

M—Homes or societies for care of mentally defective or insane

N—Day nurseries.

P—Homes or societies for care of prisoners or their families.

R—Reformatories, usually for juvenile offenders.

S—Sanatoria.

T—Institutions or societies for care of persons suffering with tuberculosis.

V—Homes or societies for care of veterans or their wives.

NOTE: Where a question mark has been introduced in the absence of other symbols or answers, no information was obtainable. Where it precedes or follows other symbols, information from apparently authentic sources is conflicting.

MEMORANDA AND BRIEFS No. 37.

EDUCATION.

DISTRIBUTION OF STATE APPROPRIATION.

Harrisburg, Pa., April 20, 1920.

Dr. Edgar Fahs Smith,
Chairman, Committee No. 5.

Dear Sir:

I understand you desire a memorandum on the distribution of state appropriations for school purposes, from 1873 to 1919. I submit herewith a table prepared by the department of public education giving full information on the subject.

Yours very truly,

WM. DRAPER LEWIS,
Secretary.

DISTRIBUTION OF STATE APPROPRIATION

Year	Total Appr.	Sal. Co. Supt.	Sal. Asst. Co. Supt.	Ex. Co. & Asst. S.	High Schools	Aid to N. S.	Main N. S.	Pur. N. S.
1919, ------	$24,000,000	$315,980	$298,800	{ $66,000 / 84,000 }	$750,600	$850,000	$460,000	$100,000
1917, ------	18,000,000	250,000	220,000	--------	750,000	700,000	460,000	25,000
1915, ------	16,000,000	240,000	201,600	--------	450,000	600,000	--------	100,000
1913, ------	16,000,000	240,000	--------	--------	450,000	600,000	--------	--------
1911, ------	15,000,000	230,000	--------	--------	450,000	600,000	--------	--------
1909, ------	15,000,000	230,000	--------	--------	450,000	600,000	--------	--------
1907, ------	15,000,000	230,000	--------	--------	450,000	475,000	--------	--------
1905, ------	11,330,000	230,000	--------	--------	200,000	475,000	--------	--------
1903, ------	11,220,000	220,000	--------	--------	100,000	475,000	--------	--------
1901, ------	11,211,000	211,000	--------	--------	50,000	400,000	--------	--------
1899, ------	10,465,000	205,000	--------	--------	--------	260,000	--------	--------
1897, ------	11,458,000	198,000	--------	--------	--------	260,000	--------	--------
1895, ------	11,458,000	198,000	--------	--------	--------	260,000	--------	--------
1894, ------	5,693,000	95,000	--------	--------	--------	98,000	--------	--------
1893, ------	5,693,000	95,000	--------	--------	--------	98,000	--------	--------
1892, ------	5,181,000	86,000	--------	--------	--------	95,000	--------	--------
1891, ------	5,181,000	86,000	--------	--------	--------	95,000	--------	--------
1890, ------	2,151,000	86,000	--------	--------	--------	65,000	--------	--------
1889, ------	2,151,000	86,000	--------	--------	--------	65,000	--------	--------
1888, ------	1,651,000	86,000	--------	--------	--------	65,000	--------	--------
1887, ------	1,651,000	86,000	--------	--------	--------	65,000	--------	--------
1886, ------	1,134,000	86,000	--------	--------	--------	48,000	--------	--------
1885, ------	1,134,000	86,000	--------	--------	--------	48,000	--------	--------
1884, ------	1,126,000	86,000	--------	--------	--------	40,000	--------	--------
1883, ------	1,126,000	86,000	--------	--------	--------	40,000	--------	--------
1882, ------	1,000,000	67,000*	--------	--------	--------	32,000	--------	--------
1881, ------	1,000,000	67,000*	--------	--------	--------	32,000	--------	--------
1880, ------	1,000,000	67,000*	--------	--------	--------	32,000	--------	--------
1879, ------	1,000,000	67,000*	--------	--------	--------	32,000	--------	--------
1878, ------	1,000,000	67,000*	--------	--------	--------	32,000	--------	--------
1877, ------	1,000,000	67,000*	--------	--------	--------	28,000	--------	--------
1876, ------	1,000,000	67,000*	--------	--------	--------	28,000	--------	--------
1875, ------	1,000,000	67,000*	--------	--------	--------	28,000	--------	--------
1874, ------	1,000,000	67,000*	--------	--------	--------	20,000	--------	--------
1873, ------	760,000	67,000*	--------	--------	--------	20,000	--------	--------

*Estimated.
†Used to pay High Schools the maximum.

FOR SCHOOL PURPOSES, 1873-1919

Liq. Ind. N. S.	Eng. Pro. N. S.	Voc. Ed.	Agr. Ed.	Con. of Schools	Non-Res. Tuition	Phil. N. S.	Min. Salary	Common Schools
$225,000	$139,000	$350,000	$300,000	{$350,000 8,000 Blind Ch.}	--------	--------	$10,500,000 00	$9,201,220
325,000	139,000	300,000	200,000	--------	--------	--------	4,448,305 25	10,174,694
--------	State B. †1,000,000	227,800	97,000	--------	$100,000	--------	2,252,537 35	10,731,062
--------	--------	88,000	52,000	--------	100,000	$72,000	2,166,203 82	12,231,796
--------	--------	--------	--------	--------	100,000	72,000	2,058,868 05	11,489,131
--------	--------	--------	--------	--------	100,000	72,000	1,961,903 69	11,586,096
--------	--------	--------	--------	--------	--------	--------	----------	13,845,000
--------	--------	--------	--------	--------	--------	--------	----------	10,425,000
--------	--------	--------	--------	--------	--------	--------	----------	10,425,000
--------	--------	--------	--------	--------	--------	--------	----------	10,550,000
--------	--------	--------	--------	--------	--------	--------	----------	10,000,000
--------	--------	--------	--------	--------	--------	--------	----------	11,000,000
--------	--------	--------	--------	--------	--------	--------	----------	11,000,000
--------	--------	--------	--------	--------	--------	--------	----------	5,500,000
--------	--------	--------	--------	--------	--------	--------	----------	5,500,000
--------	--------	--------	--------	--------	--------	--------	----------	5,000,000
--------	--------	--------	--------	--------	--------	--------	----------	5,000,000
--------	--------	--------	--------	--------	--------	--------	----------	2,000,000
--------	--------	--------	--------	--------	--------	--------	----------	2,000,000
--------	--------	--------	--------	--------	--------	--------	----------	1,500,000
--------	--------	--------	--------	--------	--------	--------	----------	1,500,000
--------	--------	--------	--------	--------	--------	--------	----------	1,000,000
--------	--------	--------	--------	--------	--------	--------	----------	1,000,000
--------	--------	--------	--------	--------	--------	--------	----------	1,000,000
--------	--------	--------	--------	--------	--------	--------	----------	1,000,000
--------	--------	--------	--------	--------	--------	--------	----------	901,000
--------	--------	--------	--------	--------	--------	--------	----------	901,000
--------	--------	--------	--------	--------	--------	--------	----------	901,000
--------	--------	--------	--------	--------	--------	--------	----------	901,000
--------	--------	--------	--------	--------	--------	--------	----------	901,000
--------	--------	--------	--------	--------	--------	--------	----------	905,000
--------	--------	--------	--------	--------	--------	--------	----------	905,000
--------	--------	--------	--------	--------	--------	--------	----------	905,000
--------	--------	--------	--------	--------	--------	--------	----------	913,000
--------	--------	--------	--------	--------	--------	--------	----------	673,000

MEMORANDA AND BRIEFS No. 38.

HOUSING PROBLEM—CONSTITUTIONAL CHANGES NECESSARY TO SOLVE.

Harrisburg, Pa., April 30, 1920.

Charles H. English, Esq.,

Chairman, Special Committee on Municipalities.

Dear Sir:—I understand you desire a memorandum on the constitutional changes necessary to solve the housing problem. I submitted this question to Mr. John Ihlder, Executive Secretary of the Philadelphia Housing Association, and append hereto his letter.

Yours very truly,

WM. DRAPER LEWIS,
Secretary.

Mr. William Draper Lewis,
Commission on Constitutional Amendment and Revision,
Harrisburg, Pa.

Dear Sir:—I have received your questions and I submit herewith data which will give you the informatios desired:

> What constitutional changes, if any, are necessary to enable the state and municipal governments to meet in an adequate way the housing problem?
>
> I. What is the housing problem?
>
> II. Illustrations of the ways in which districts should be improved.
>
> III. Definite constitutional provisions.

The housing problem is the problem of securing proper dwellings for all the people.

There are two well-defined governmental methods of attacking this problem. These methods are supplementary and neither by itself gives hope of success.

The first method is by governmental regulation of the work of private builders and developers.

The second method is by governmental assistance in building and development. This takes various forms.

Both methods have been used for many years by the nations of western Europe, by Canada and several South American nations and by the Australasian commonwealths. In the United States, until recently, the chief reliance has been upon the first method. Now, however, the second method is coming more openly into use; as in Massachusetts, California and Wisconsin. Before the war and since, bills have been introduced in congress at several sessions authorizing the issue of bonds, the proceeds of which were to be used to erect dwellings in the District of Columbia. During the war the federal

government, like that of England, erected thousands of dwellings in order to make possible the production of ships and munitions.

Governmestal Regulation.

This takes two forms: housing regulation which deals with individual buildings, and zoning and city planning which deals with the development of areas or of whole communities. For such governmental regulation there is sow constitutional sanction, execpt that it might be wise to give zoning and city planning special mention in the new constitution.

Governmental Assistance.

Forced by the logic of facts, our American state and municipal governments long have given assistance in building and development, though, as stated above, it is only recently that some of them have definitely stated that this is for the purpose of securing better dwellings. They extend sewers and water mains in order to stimulate the erection of dwellings. (This is a matter of first importance in Philadelphia today.) They build and manage transit facilities in order to relieve an intolerable congestion of population due largely to improper and unregulated urban development in the past.

In order that such assistance may be most effective, or that it may be given in adequate measure to those districts which it serves, experience has shown the wisdom of constitutional provisions permitting excess condemnation and assessment of benefits. Such provisions are included in the printed draft of the revised constitution.

Experience has shown, however, that it is necessary for the state and its municipalities to go farther than this if they wish to correct the worst abuses of the past or to prevent the development of similar abuses in the future. Today we seek to accomplish these results by round-about and inefficient methods, as by clearing out a slum spot and using its site for a park or playground, or by securing, in an as yet undeveloped area, a creek valley or marsh for park land in order to prevent the creation of a slum. Such round-about methods have the disadvantage which usually attends efforts to kill two birds when one has only one stone. In the attempt to kill both, both are often very imperfectly killed. In order to get rid of an especially bad group of houses the playground is not placed in the best spot and by being forced to concentrate on a group of houses that cover a site small esough to warrant condemnation for a playground other houses almost as bad, are left, to the detriment of the neighborhood for which the playground is created. Meanwhile, those who secured the playground, congratulate themselves on having put a patch on the old garment and turn their attention elsewhere.

Municipalities Now Own Land Occupied by Dwellings.

There is another phase of the matter as it stands today that calls for attention. The public authorities often secure land for playgrounds, parks, bridge approaches or other "public" purposes years before they can use them for these purposes. Meanwhile the old dwellings remain and continue to be occupied. There being no municipal department definitely charged with responsibility for the proper

maintenance of such property, it is often not properly maintained. For example, there are today in Philadelphia on city owned land, some of the worst houses in the city. This land was bought for a playground several years ago. There is no immediate prospect of its being used for that purpose. Meanwhile the dwellings stand and are occupied. With our present housing shortage it would be little short of a crime to vacate them. If they were vacated they would probably become nuisances, harbors for vagrants, places for clandestine vice, receptacles for filth. But it is also little less than a crime that they should be neglected as they now are, until some of them at least have become unfit for human habitation. That is, the municipality now owns lands occupied by dwellings. It has done so for many years, now one piece, now another. It will continue to do so in the future. But because of lack of constitutional sanction for such ownership, it must pretend to ignore the fact it is unable to place responsibility for the proper maintenance of such property.

Authorization to Take, Hold and Sell Land, Etc.

In view of the above facts it is suggected that the state and the municipalities be given authority under some such provision as the following:

> "When it is in the public interest the commonwealth or a municipality may take, improve and lease or sell land and the improvements thereon, subject to such limitations as the general assembly may prescribe."

Use in Congested Areas.

Such authorization would and should be used for other than the single purpose above described. There are today in our cities considerable areas which have been spoiled by improper development. The speculator or the ignorant builder has "sweated" them to the limit, the public authorities have failed to provide proper public ways. Here are rear dwellings, back-to-back dwellings, dwellings fronting on courts or very narrow streets and on dead-end streets.

It is quite impossible now for private enterprise to rectify this condition. At private sale one can not buy up all the properties necessary to a satisfactory replatting, some one or more owners, getting wind of what is proposed and learning that his property is essential to the scheme, holds out for an unwarranted price that would wreck the plan. Morever, in many such plans, it is necessry to devote to public purposes, as streets, a considerable part of the area now occupied by private buildings. The sacrifice of this land, for which private developers would get no commensurate return, again stops private enterprise.

The excess condemnation provision in the revised draft of the constitution offers no assurance of being adequate to meet such situations. The courts might well hold that it authorizes securing only property at butting upon a proposed street, park, etc., whereas here it may be necessary in order to secure satisfactory results, to acquire all the property in a square or in several squares, in one or more of which there may be involved no such "public" improvement as street

widening or extension. There are squares where the crying need is the demolition of unfit, insanitary rear and back-to-back dwellings.

At present we can only vacate such dwellings, and we can do this only when they fail to provide such essentials as water or sanitary conveniences. If such provision is made, they remain, a detriment to the community. It it is not made and they are vacated, they become virtually a public nuisance. Their existence entails constant inspection and re-inspection by public officials; a constant series of orders to clean, to improve, to vacate; constant summonses to conrt and trials, all a continual drain upon the public treasury additional to the drain caused by their effect upon their inhabitants. Such dwellings should be removed and the only agency adequate to the task is the state or a municipality. Morever the state or a municipality would benefit by their removal far more than could any private individual or corporation, for the improvement effected would not only raise standards throughout the area, but would reduce such burdens as the maintenance of health, hospital and police service.

Use in Undeveloped Areas.

Such constitutional sanction as suggested might be made use of in undeveloped areas as well as in those where land is now overcrowded. At present time our only means of preventing the improper development of a new area and the creation there of a future slum, is by regulation, which at most can prevent only the worst abuses, and by taking over for parks, land unfit for building purposes. The amount of park land which a municipality can support is necessarily limited. Moreover park land should be selected because it is fitted for park purposes not only because of its character but also because of its accessibility to the homes of the people. To take land for park purposes in order to prevent its misuse is not efficient.

Morover there is much land at present unfit for building which can be made fit if improved on a large enough scale. In the past we have permitted such land to be developed piece-meal by private initiative with the result that the municipality has been and through the future will be put to constant expense in dealing with evils that could and should have been prevented. Buildings have been erected upon marshy sites that could have been drained, over streams that constantly break through and flood cellars. To make the necessary improvements before development involves outlays at which the municipality hesitates when its only means of recouping itself lies in slightly increased tax returns. If however, the municipality could purchase the land in its natural state, make the needed improvements and then sell at the value its own work had created, not only would it be financially able to undertake such improvements, not only would its people have a more wholesome environment, but it would be saved the everlasting expense of seeking to correst, time after time, ills that can not be permanently cured after the area has been built up.

Suggestions for Constitutional Provisions.

In addition to the suggestion given above, to follow section 19, revised draft, i. e.,

> "When it is to the public interest, the commonwealth or a municipality may take, improve and lease or sell land and the improvements thereon, subject to such limitations as the general assembly may prescribe."

The following suggestions are offered: (Suggested new words are printed Italics.)

> Section 4. "No debt shall be created by or on behalf of the state except to supply casual deficiencies of revenue not exceeding one million dollars, repel invasion, suppress insurrection, defend the state in war, pay existing debts, or, with the approval of two-thirds of all the members elected to each house, improve and rebuild the highways of the commonwealth and acquire land within the commonwealth for forest *and homestead* purposes; provided, however, that no such indebtedness for highways shall be incurred in excess of one hundred and fifty million dollars, or for forest purposes in excess of twenty-five million dollars, *or for homestead purposes in excess of twenty-five million dollars*, and such indebtedness shall only be created with the consent of the electors of the state voting thereon at a public election in the manner provided by law."
>
> Section 21. "The general assembly shall not authorize any municipality to become a stockholder in any company, association or corporation or to obtain or appropriate money for, or to loan its credit to, any corporation, association or individual; but a lease by a municipality of a public service facility *or of land* owned by it shall not be construed to violate the provisions of this section, although the principal consideration for the lease is the covenant of the lessee to use the facility *or the land under* regulations protective of the public interest, or because the provision for a pecuniary return of the lessor is made contingent upon the earnings of the lessee's entire system *or holdings*.

In support of these suggestions there is herewith submitted the following:

1. Provision in the Massachusetts constitution, approved at the general election in November, 1914.

> "The general court shall have the power to authorize the commonwealth to take land and to hold, improve, sub-divide, build upon and sell the same for the purpose of relieving congestion of population and providing homes for citizens; provided, however, that this amendment shall not be deemed to authorize the sale of such land or buildings at less than the cost thereof."

2. The Wisconsin law authorizing state and municipal loans to co-partnership housing companies. The dividends on the stock of these companies is limited.

3. The California law creating a state land settlement board and authorizing it to purchase, develop, lease and sell land. (On file in office of the commission).

4. The example of the English government in making loans to public utility societies (corporations whose dividends are limited to six per cent.) up to three-quarters of the cost of land and bulidings, and in granting subsidies equal to two-fifths of the annual charges for interest and repayment of loan. (Copy of pamphlet "Housing by Public Utility Societies" issued by the Local Government Board, April, 1919, on file in office of the commission).

5. Report of the Bureau of Labor Statistics, U. S. Department of Labor, Oct. 15, 1914, on "Government Aid to Home Owning and Housing of Working People in Foreign Countries." This is a compilation of data on government aid and while not up-to-date shows how nearly universal is the practice outside the United States. (On file in office of the commission).

Respectively submitted

JOHN IHLDER,
Secretary.

MEMORANDA AND BRIEFS No. 39.

COURTS—JUSTICE AND THE POOR.

ARGUMENTS OF REGINALD HEBER SMITH AND JAMES COLLINS JONES AT PUBLIC HEARINGS.

Harrisburg, Pa., May 11, 1920.

Hon. William I. Schaffer, Chairman,

Dear Sir: The commission by resolution adopted Wednesday, April 21, 1920, directed me to submit the argument of Mr. Reginald Heber Smith of Boston, Massachusetts, on the administration of justice to the poor, and the argument of Mr. James Collins Jones of Philadelphia, in favor of the amendments to Article V, submitted by him and by Mr. Owen J. Roberts of Philadelphia.

Mr. Smith's argument relates to and supports the new section proposed by Messrs. James Collins Jones, and Owen Roberts of Philadelphia (See Calendar of May 11, 1920, page 36, section 3-C).

The amendments supported by Mr. Jones will be found on the Calendar of May 11, 1920, pp. 33, 34, 36, 38, 40, 41, 45, 47, 48, 50, 51, 53, 54.

I submit herewith the transcription of the reporters' notes of the arguments referred to.

Very truly yours,

WM. DRAPER LEWIS,
Secretary.

ORAL STATEMENT

OF

MR. REGINALD HEBER SMITH,

BOSTON, MASSACHUSETTS,

MADE BEFORE THE COMMISSION, APRIL 14, 1920.

RELATING TO PROPOSED AMENDMENT, ARTICLE V, SECTION 3-C, CALENDAR MAY 11, 1920, PAGE 36.

Mr. REGINALD HEBER SMITH. Mr. Chairman and members of the Commission: It is almost as difficult to get from Boston to Philadelphia nowadays as it was before the railroads were built. The only train that could get me here on time landed me in your station at four o'clock this morning, and if I am a little bit slow this afternoon I hope you will be patiently and charitably inclined towards me. If I can help you see the great opportunity we have for improvement in our methods of administration of justice, I shall feel amply rewarded. I shall talk to you quite briefly and very simply upon the administration of justice in this country as it affects the poorer citizens and the immigrant in this country, and we can narrow the field by a few very simple definitions. In the first place, the trouble with the administration of justice in this country at the present time is not due to the judges. I think the general statement is warranted that the work of the American judges constitutes perhaps the most faithful and upright class of service that we have in the country. Secondly, although I believe that our present method of administration of justice has caused a denial of justice in many cases to the poorer persons, yet that system causing a denial of justice I would like to have it thoroughly understood, has not been brought about as the result of evil planning or the machinations of any body or group. In other words, no dominating class in this country has set out to wreck the machinery of justice which would make justice impossible to the poorer classes. No class has control over that. Third, the trouble is not with that body of the law which lawyers call the substantive law, as distinguished from the law of procedure, which we call the adjective law, or the machinery of justice. The substantive law is the law which creates and defines the rights and the liabilities of persons in justice with each other and in justice with the state. Now, the great body of the American substantive law is democratic to the core. It is no respector of persons, and that, gentlemen, in itself is a tremendous achievement. Our substantive law, so-called, is extremely fair and extremely democratic on the whole, and yet I want to make the point clear because it narrows that down to the field that needs more attention than anything else in the administration of justice. If you run your mind back just a moment in history you will realize what the substantive law in this country really is. In the first code really drawn up it was provided that if a man assaulted the daughter of a rich man he would get killed, and if he assaulted the daughter of a poor man he could be fined but a few pennies. In Rome in ancient times when a man came before the law or judge he was asked, "what class do you belong to?" If you were a rich man you might go with light punishment, but if you were a poor man, a day laborer, then you

might be crucified for the same offense. Instances of that kind, things of that sort, are absolutely lacking in our laws today. The body of the law on the whole is a remarkably human achievement; but we know that in a large civilized community the law is not really law in the sense that it is a productive force only when it can be enforced through a court of law. There is a difference between what Dean Pond of the Harvard Law School, called the law in books and the law in action; in other words, law in books is merely paper and printers' ink, and it leaks from the books and has life and can protect us and redress us, if we have wrong, only if we have administration of justice, and if we have fairness in court. The substantive law, if it is to be a reality to all citizens and the administration of justice, which enforces those laws must be acceptable to all citizens and workable by all citizens. Now, what is the situation in the administration of justice in this country? I would like to have you look at that through the eyes of an Italian client who came to me some three years ago. This is a story I like to tell and I can vouch for it because it came within my personal experience. This is on Massachusetts. The Italian came to me and said that three weeks before he came to see me, while leaving his factory one day he had been met by an agent of a phonograph company who induced him to take a phonograph on approval. The agent said to this Italian, "All you need to do to get this pronograph on approval is to sign your name and address to this blank piece of paper, so that we will know where to send the phonograph." The paper was folded in this manner (demonstrating). The Italian wanted to return the phonograph and the agent said to him, "You cannot return it, it was sold to you on a contract" He said, "Come down to the office and we will talk it over." The Italian went to the office and the agent then unfolded the sheet of paper, and on the upper part of the paper had been printed a legal assignment of his wages, so the whole thing constituted a legal assignment of his wages. admittedly, by the man in his own hand writing. That had been served on the man's employer who, under the Massachusetts law, had to hold up the Italian's pay. That had gone on for three weeks. At the end of the three weeks the Italian had no money in the house, he had no food in the house and his credit was exhausted. He came to me to see what the law of Massachusetts could do for him. Now, the substantive law of Massachusetts affords him plenty of remedies, just as the substance of law of your state affords plenty of remedies, but if I took his case into the lower courts of Massachusetts, appeals could be had so that the case would have to be tried twice, and when you want relief to come, you cannot stand delays. Or, I could have taken the man into our Massachusetts equity courts, where we would have had a speedy trial and we would have an honest judge take that assignment of wages and tear it up. Before I could get that man into a Massachusetts equity court he would have to pay three dollars entrance fee, five dollars sheriff's fee for serving process, and so on and let us say, fifteen dollars attorney's fee to draw and present the bill of complaint. Now, in that simple little story we have the difficulties with the administration of justice in this country as it affects the poor people and immigrants. There are three difficulties; first, delays; second, court fees; third, the expense of hiring lawyers. I am going to pass over the delay without saying much about it because

the situation with regard to delay in our courts is infinitely better than it used to be, but it can yet be made better, and I think that the public conscience and public opinion will have their effect in eliminating delays, so far as they may. Secondly, the system of court costs and fees, that is, the tariff which the state levies for the privileges of using its courts. We have a curious situation as to that. There were no costs in the early English courts, and before the time that the system of costs grew up in England, parliment also passed a law, as far back as Henry the Seventh, that if any man could not afford to pay these costs, he was to have his rights and be allowed to come into court with nothing. The only point I want to make about court costs it not that you should abolish them, not necessarily that you should reduce them, but that you should always have in mind the fact that there are two great principles involved. If it is right to charge costs for the privilege of using the courts, keep in mind distinctly the fact that the courts exist to do justice, and if by chance these two principles meet and one has to yield, let it be the system of costs that backs and gets out of the way, so that the principle of doing justice may have the right of way. Now, unfortunately, gentlemen, until recently in this country the courts and the legislatures have worked it the other way around. They have lost sight of the fact that the system of costs, which grew up to add somewhat to the state's revenue, was never intended by the men who built it up to be a prohibition so that if a man could not meet the expense he should not be entitled to his day in court.

The most striking case that I can bring to your attention is a Wisconsin case where a man named Campbell brought suit against a railroad company. The railroad company moved that Campbell be obliged to furnish bond for the costs. Campbell replied that he was a poor man and could not put up a bond, and the trial judge threw his case out of court. Campbell appealed to the supreme court of Wisconsin, and the Supreme court of Wisconsin said that they had no statute which permitted a man to sue forma pauperis, that is, suing without having to pay costs. It seems absured that a poor man should not be allowed to litigate. Now, genetlmen, I venture to remark when any citizen is not allowed to litigate—I do not blame the Wisconsin court, that may have been the law, and I suppose the blame must rest on the shoulders of the soverign people of that state,—but I submit to you this proposition, that if organized society chooses through its laws to devise a system which in actual practice operates to outlaw a man like Campbell by throwing him out of court, that organized society is itself to blame. You see, gentlemen, it is a vicious circle. Very often the reason a man has not the money to pay the court costs is because of the wrong for which he seeks redress, as, for example, if he has not been paid his wages for three or four weeks. It is a vicious circle. He goes to court because he needs money, and he cannot pay the court costs because of the very difficulty, the very wrong, which makes him seek court relief, and yet, gentlemen. I can say to you in all solemnity that it is just within that circle hundreds of thousands of honest wage earners have been caught in this country and are still being caught. The solution is a simple one. I think democratic America in the twentieth century might well follow the example of England, who, in the sixteenth century passed a law providing that the judges could, in proper cases for

cause shown, permit a person to sue in court without prepayment of costs. That will cure the whole situation and does not mean any real diminution of revenue to the state from the system of costs. Now, the third difficulty has been with counsel, the expense of hiring lawyers. The nature of that difficulty will be perfectly clear to us on a moment's reflection. We all know, of course, that if any man wants to be advised as to what his legal rights are he must have the assistance of a lawyer. If he wants to take a case through court he must have the assistance of a lawyer. A man must have a lawyer in order to make the administration of justice work. I think we can all agree on that. So can all agree I think on the second proposition. I take it that some of you gentlemen here are lawyers, and this will appeal to you as it does to me. We lawyers are all human beings, we have families, we have children, they have to be fed and they have to be clothed. Therefore we have to be paid a reasonable fee for our services. When you put the two things together it results in this dilemma. There are hundreds and thousands of good American citizens who need the services of lawyers in order that they may receive justice, and yet who are unable to pay the fees which the lawyer must properly charge for his services. Now, there is that great dilemma in the existing system of administration of justice in this country. There are two methods of solving that difficulty. The first method is by making the lawyer unnecessary. That cannot be done entirely. It can be done as to certain classes of cases, and with your permission I would like to tell you about the small claims court which now exist in this country. These, gentlemen, are not distinct and new courts, they are merely sessions of existing courts. They are called distinct courts because they have developed a new and rather enlarged procedure and if I refer to them as courts please do not understand me as asking you to establish more courts. I think we have altogether too many courts in the country everywhere as it is today. I can best illustrate the small claims court by telling you a story of an actual case that I have heard tried in Cleveland sitting on the bench of the small claim court. Call it case of Mr. A against Mr. B—Mr. A, a tailor, pressed a suit for Mr. B and rendered a bill for four dollars which had not been paid. He took the bill to the clerk in Cleveland small claims court and he first called up Mr. B but he could not get payment by telephone so A's bill went on the county court docket and A swore to it. A copy of the bill was mailed and delivered to the sheriff who put it down the mail chute so that the class of service was only 2 cents, on account of it being delivered by Uncle Sam, and he was told to be in court on the third following day. It was on the third following day that I was in court when this little matter came up and A and B stepped to the bench, they both came up to the bench, much as I am standing before you gentlemen now and the judge talked to A and satisfied himself that the work had been done and the bill not paid. Then he turned to B and asked "why have you not paid the bill?" B said "I will tell you judge; when that suit was delivered the man insulted my wife and I will not pay a man who insults my wife." The judge turned to A and said to A "how about that?" "Well," said A, "I did not deliver that suit but my boy did and I will admit at times he is inclined to be a little fresh." The judge said "very well you go into my anti-room and telephone to Mrs. B and say you are sorry," and A did so

and came back. Judgment was rendered in favor of A for four dollars and B paid the bill by handing to A four dollar bills. They shook hands and said "thank you, judge," and walked out of the court room arm in arm. I claim that that court is an advance over any court we have in Massachusetts and possibly over any court you have Pennsylvania for the handling of that sort of case. In other words, gentlemen, there are certain types of cases, little cases, where informal direct procedure, not only permits justice to be done but eliminates the expense, because in a simple little dispute like that there is no need of technical and cumbersome rules of evidence and certainly no need of lawyers fighting with each other about a little four dollar bill for pressing a suit. In other words, as to that class of case, if some court in this jurisdiction under the constitution which you are drawing has power to regulate rules of procedure and evidence then you can in yours, establish sessions in municipal courts where that same thing can be done as it is done in Cleveland, and in about seven other states in the country today.

Domestic relations courts also are solving the problem in a number of cases through their system. They do give a very real amount of legal services to persons who come before those courts, but although you can in certain fields, such as small claims and domestic relations, and the injured workmen under the workmen's compensation act, although in those fields you can by mechanical readjustment, intelligent rearrangement, make the attorney unnecessary yet the truth remains as to the great field of the law and so to most litigation the attorney is the integral part of the administration of justice and you cannot get along without him. As the supreme court of the United States says, the lawyer is just as much a part of the court as the judge and that true, gentlemen, in the function that the performance of the lawyer is just as important to the administration of justice as is the judge. That conception lawyers realize when they are reflecting, but it is a thing they do not act on in this country, that the lawyer is a party to the administration of justice. The importance of that point is this: If we agree that it is the duty of a civilized democratic state to see that justice is done between its citizens then it is not enough for the state to build court houses, pay judges' salaries, jurors fees and all the rest of the administration of justice, and leave out of the court the lawyer. In other words, if the lawyer is necessary to the administration of justice and if it is the duty of the state to see that justice is done between man and man, then it is the duty of the state to see that every citizen has, somehow, the services of a lawyer, because without the lawyer the whole machinery is virtually unworkable.

I do not want to see that carried any further than it has to be carried, but I am prepared to see it carried as far as necessary to guarantee equality of justice to everybody. Now this idea of supplying lawyers gratuitously to people who cannot buy lawyers' services is not new. The curious thing—perhaps not the curious but the typical way of meeting a situation of that sort is, first, private philanthropy coming into the field. Those private philanthropists are called the legal aid organization. They are nothing but law officers, gentlemen. The only difference between them and another law office is they have more clients than any other office, but the clients do not pay the fee, the lawyers are paid salaries, paid by general contribution from the

charitable orders. There are today forty-one such organizations in this country, comparatively recent most of them, grown up since 1910, and yet, gentlemen, those organizations, new as they are, are called upon already to furnish lawyers to one ond one-half million American people and they have collected cash sums for those people aggregating about $7,000,000.00. Now that shows the truth of the whole propositioon. In the west, which I think is still a little more progressive and willing to take chances than we are in the east they decided that it was not right to leave a function of that sort in the hands of a private philanthropist, but that it was something that had to do with the administration of justice and in that field private hands must be off, that it was a concern of the public and so they started the idea of municipal legal aid bureaus. The first was in Kansas City and there are about seven of them now. It is perfectly clair to my mind that this legal aid work, this business of guaranteeing justice to persons by giving them the services of the lawyers must become a public function; it cannot remain in private hands. I sincerely question whether when it becomes a public function it should be allowed to become a municipal function. It seems to me that this legal aid work must be operated under the control of the judiciary because legal aid work is a part and parcel of the administration of justice, so that I hope very much nothing may be written into the present construction of the constitution that you are working on which will prevent that development from taking place.

By some coincidence, gentlemen, we have in the State of Massachusetts a judicatory commission which is working along the same lines that you gentlemen are working here. It seems to me if your commission and our commission in Massachusetts can have the courage to see this problem clearly and go forward sanely and yet courageously, it is not at all unlikely that we may control the course of the development of judicial procedure in this country, for the next generation for Pennsylvania and Massachusetts are two states that have great influence with the other states of this country and if we can go forward and make it possible for every man to have his day in court and have adequate representation when he is in court we will come very much nearer to a realization of our two fundamental ideas of a democracy, which are these: Ours shall be a government of laws and not of men, and before these laws all men shall be on the basis of absolute equality.

If I can answer any questions, gentlemen, I shall be happy to do so.

Mr. FISHER. Does this provision, Mr. Smith, cover what you have in mind or have you any suggestions to make.

Mr. SMITH. That provision does not.

Mr. FISHER. We will be very glad to have your suggestion.

Mr. SMITH. I understand that a new provision has been drawn—perhaps I may be anticipating something that the secretary ought to say—there is a provision which has been drawn, which I have seen, that is, I am sure, better than that.

Page 35, this is all right. There are two difficulties with that. In the first place I think the system of providing a method whereby persons should be able to go into court without payment of costs should be left to the rule-making power of the court. It should be left to the rule-making power of the courts rather than to the general assembly, merely on the ground that it is a proposition which affects

the technical side of the administration of justice and it would seem to me, therefore, safer to leave it in the hands of those men who ought to be expert on the technical side of the administration of justice, that is, the judges of the higher courts of the land.

Mr. FISHER. You would suggest that our supreme court should be permitted to make rules which would take care of this class of litigation.

Mr. SMITH. I certainly would, sir. And the second difficulty is this: You have attempted to make it possible for all persons to have the assistance of lawyers by allowing the court to appoint lawyers for such persons. The difficulty with that proposition is this, that is the system which is now working in England and it is excellent, it is wonderful in comparison with what exists in other states, but we in America can go one step further if we want to. If any one has no lawyer and needs one, counsel can be assigned to him and in England, as would happen under this proposed section, you would have a shifting group of lawyers being assigned to the different cases as they come along. Now in America with our genius for organization and craving for efficiency we have built up something that they never heard of in England—legal aid organizations, a group of lawyers like a hospital staff for example, a permanent group who become very expert in the cases of the poorer people, who handle them with great despatch and thereby can do it more economically and efficiently, and which being permanent for three or four years at a time instead of shifting from case to case, result in a centralized responsibility.

Mr. ALTER. Of course, this will permit the court to adopt a certain system as to permanently appointin certain men to that kind of work.

Mr. SMITH. It might be worked out, although I should imagine a draft could be drawn which would make it somewhat easier for the court to regulate the matter. I think they ought to have that power.

Mr. FISHER. Perhaps it would be well to embrace both ideas.

Mr. SMITH. That is true.

Mr. FISHER. It could be done by appointment to better advantage.

Mr. SMITH. It could be a separate tribunal.

Mr. FISHER. You do have both systems now.

Mr. SMITH. A man like Mr. George Wharton Pepper, could be appointed as counsel and have him try the case.

Mr. FISHER. We do that as a matter of fact in our county courts.

Mr. SMITH. Appoint counsel?

Mr. FISHER. Yes, sir.

Mr. SMITH. In similar cases?

Mr. FISHER. In similar cases.

Mr. SMITH. In civil cases?

Mr. FISHER. I do not know whether it is done in civil cases.

The CHAIRMAN. The comparison is between barristers and solicitors. Barristers are in continuous attendance. I remember that when Lord Charles Russel led the bar of England, it was said that the meanest criminal in the docket could summon him in his full panoply as a barrister on the presentation of a sovereign, or any barrister that did not hold a fixed brief. So we would have to adopt some such system as that in the large cities, so that lawyers would be in attendance on the court whenever their services were required.

Mr. SMITH. Yes, but I do not know what time you are referring to. I understand that in 1903 they had occasion to revive their criminal code in order that the prisoner could have adequate defense in his suits and providing that no lawyer is at liberty to refuse an assignment, so I take it there has been some little difficulty there.

The CHAIRMAN. This condition could be better handled through the courts than through the legislature, is that your thought?

Mr. SMITH. I believe so, sir.

Mr. STACKPOLE. This leads to new litigation without end.

Mr. SMITH. I think not. You would think that the thirty-one legal aid organizations would have brought about a vast amount of litigation which would not otherwise have been brought. I think the general opinion is to the effect that if anything it has a tendency to reduce litigation because ninety per cent. of the cases sent to legal aid officers are settled. The trouble is that where a person thinks he has a grievance that cannot be heard he is an enemy of society, but if he can argue it out in court or is told by an honest lawyer that there is nothing in the case, he goes away satisfied. There will be a certain increase in litigation in the sense that there would be more cases brought than there have been. But it seems to me this is as it should be.

Mr. FISHER. Many of those cases would be washed out before they got into court.

Mr. SMITH. In the regular course of events, many of them would be washed out before they got into court. In my opinion the increase of litigation does not mean an increase to the taxpayer. In the small claims the lawyers do not always appear in court.

Mr. FISHER. Judges do appoint lawyers.

Mr. SMITH. Yes, they do. You must provide that they have one good fair, square trial before a good fair, square judge and then the claimant will have no further right.

The CHAIRMAN. I am sure we are very much obliged to you for your remarks.

Mr. SMITH. It has been a pleasure to be here.

ORAL STATEMENT

OF

MR. JAMES COLLINS JONES,

PHILADELPHIA,

MADE BEFORE THE COMMISSION, APRIL 14, 1920.

RELATING TO AMENDMENTS PROPOSED BY HIM TO ARTICLE V, CALENDAR OF MAY, 1920, PAGES 32 TO 54.

Mr. JAMES COLLINS JONES. Mr. Chairman and Members of the Commission: Mr. Smith doubtless made reference to a draft of a section that I wish to add in regard to a proposition that some of us would like to see put into the present constitution, not only a power but also a duty upon the supreme court of the state to make rules.

The way that this problem of the judiciary comes up to me and to some of my associates is that we think there ought to be a provision in the constitution, the constitution ought to be very much of a skeleton, the great danger is to get too much there, let us get just as little there as we can have, and then trust to the force of circumstances to create the change that we need to answer our requirements. My thought is that you do not want to provide for any more courts than you have to. I should very much like to see a provision for a supreme court, and such other courts as the legislature may create. Now, I recognize that is a situation that you cannot quite accomplish. I believe that the demand for the organization of common pleas courts would be so strong throughout the state that you would probably have to give some recognition to the common pleas court so that I would compromise if I were solely responsible for this thing, by providing for a supreme court, for common pleas and for orphans' courts, and beyond that I would not go. I would give the legislature the power to create such other courts as it may determine to be necessary, and I say beyond that I would not go. I speak with some diffidence as to the situation as to the justice of the peace courts outside of Philadelphia.

The CHAIRMAN. Would you leave the superior court in?

Mr. JONES. I would not put the superior court in. It is still an open question as to whether the division of our appellate court as we at present divide that court is a desirable thing. It may be desirable to create one appellate court in two divisions, it may be desirable to maintain the existing situation, but let us find that out and if it is desirable to change the existing situation and have one appellate court of two divisions let us do it. You have created a supreme court and I do not believe you can do much better than you have done. You give it jurisdiction. So far as this commission is concerned, you change the jurisdiction of the old King's Bench, take away from it some of the old original jurisdiction, but you have got a real court there. You have provided for the election of men for a long term. Now you have got a hinge from which everything else can swing. I have not been in the rural districts as much as you have been, but whenever I have occasion to go there I am tremendously impressed by the dignity of the local judge. He occupies a place in the community to which we have nothing comparable in our larger cities, and it is a very important local institution, and I think to have the constitution that you are going to submit to the people leave [illegible] out that institution would create an ill feeling that no amount of [illegible] out cal justification would quite get over. So, I do not, from [illegible] theoretiview, regard it as worth while to consider here the [illegible] my point of bility of getting rid of the common pleas. I do [illegible] theoretical desira- Then, having gotten the common pleas, I th[illegible] not think you could. vide for the orphans' court. The orpha[illegible] it is desirable to pro- necessities of Pennsylvania. I thin[illegible] court is one of the great- have reason to be proud of our [illegible] all of us Pennsylvania lawyers a body of experts and they [illegible] orphans' court system. We have got nity, with correctness [illegible] have performed their functions with dig-

I would end my [illegible] with economy.

putting in the [illegible] compromise as to putting in the supreme court by do not put [illegible] common pleas and orphans' court. Certainly, please for Pp[illegible] anything in about the justice of the peace or magistrates [illegible] elphia, and do not put any substitute in. Let us have a

free hand there. Now, if the people outside of Philadelphia want a justices' court of some sort, that is all right, but I think this is a psychological opportunity to clean up that situation as to justices of the peace. I presume that you may be forced to do it, but I very much dislike to see the hand of the legislature tied on the problem of the justices of the peace. I would like to see the legislature free to clean that up. I would define the personnel of the common pleas courts in the different judicial districts but I do not think you accomplish anything by the description of a jurisdiction. If the description of jurisdiction means anything you have got to add a clause that that jurisdiction cannot be taken away from them. The clause that you at present have, that the jurisdiction now possessed by the judges of the common pleas cannot be taken away, is ineffective. That sentence on its face seems as though it would prevent a depredation of the jurisdiction of the common pleas, but the supreme court has decided otherwise, so that unless you have a section providing in terms that the legislature cannot take away the jurisdiction, there is not much accomplished by going to the trouble of defining jurisdiction. We have got to do as the supreme court defined; you have got its appellate and original jurisdiction defined; you have the common pleas court defined, as to personnel and districts; you have the orphans' court defined and then you are free for future experiment.

There is one other point that seems to me on its face extremely attractive, but I fear it is illusive, and that is the prohibition imposed upon the legislature as to the imposition of non-judical functions upon the common pleas judges. We all know the generation of the thought and all of us lawyers I think are in sympathy with the generation, but I think it is a very dangerous prohibition. Before you venture to maintain such a prohibition, you would have to be very clear in your mind as to just what non-judicial functions common pleas courts are now performing, and you would have to be very clear in your mind that those certain functions that you thought were judicial would be held to be judicial, and you would likewise have to clear up certain things that are now non-judical, but are omitted from the power of the common pleas judges. I think there are doubts along that line. What is the opening of a road? It that judical? Unquestionably that function in the quarter session court has been performed from time out of mind, but I submit that it is fundamentally an administrative function. It is the function by which the power of eminent domain, and so on, is carried out. You take the question of appeals from tax assessment. I think most of us would say that it was not judicial. But we know the Supreme Court of the United States has over and over again said you cannot construct a tax system with no court in it. It is not necessary to give the right to every jurisdiction to review tax assessment. Therefore when you provide for an appeal to the common pleas from a tax assessment are you not conferring a function or something else? Of course, in our courts at present the quarter sessions court licenses the detectives and they make appointments to fill vacanies in other cases. In your third article you confer a non-judical function when you provide that the court shall have the right to remove justices. So that the problem of what is judicial and what is not judicial is a little subtle. Then you come to the practical aspect of things. I view with a good deal of horror the deprivation from our courts of the appointment of viewers. It seems to me that it is the proper place to put the appointment. It is clearly non-judicial, but it is certainly the first cousin to judicial.

The board of viewers is part of the general judicial machinery, and it would be an amomaly if the judges did not have the power to appoint that board. I would view with considerable regret the removal from our common pleas court of the jurisdiction to appoint the members of our board of city trusts. Certain things grow up by tradition, and you cannot disturb a situation without imperling the safety that tradition has forgotten. We have a tradition in Philadelphia that nobody shall be appointed as a member of the board of city trusts who has not met a certain standard, and we have today a very efficient tribunal. It might be we could get an efficient tribunal in some other way, but we are suffering from no evil by reason of that appointment.

Mr. FISHER. Would any other agency provide you with the personnel equal to that?

Mr. JONES. It might, and it might not. But the thought in my mind is that we have two things, an agency and a tradition, a certain tradition that hangs around that aappiontment, and the agency we have has got to live up to that tradition. You start an agency right and keep them in a certain path of right for many years, and it is rather improbable that they will get out of that. It is due to inerita. At the present time we have an agency, and by inertia we hold to that tradition.

Mr. FISHER. It has been suggested that the mayor could make appointments of an equally high standard.

Mr. Jones. I agree with you that the mayor could make the appointments, and perhaps of equal standard. We have perhaps eliminated many applicants, and that is what gives joy in their existance. It is a question. You take away the park commission we have. We have been successful in getting a body of public spirtial citizens to serve on our park commission. I presume we could take the same proposition you have offered, but I would hesitate to try the experiment. We all know what has brought about this revulsion. All of us lawyers regret that the court had anything to do with the liquor licences, and we had to take chances of everything else in order to get the liquor licenses away from the judiciary; but to-day the liquor license is no longer with us; that function is no longer to be regarded. We have been successful in getting a body of public spirited citizens and we think we have a body that is eminently competent to perform a certain function, and it ought to be made very clear to that body that they not only have the power to do it, but that it is their duty to do it; and I suggest that you put up to the supreme court the regulative duty and power. I will read the languages in which we have put that thought, but before doing so I want to say a word or two about the situation. I think we all feel that our substantive laws is a pretty good body of law, and we all feel that the administration of justice is proper, but the procedure is appalling. It is not only the poor man who cannot afford to get into the court, but the rich man cannot afford it.

Mr. FISHER. He does not want to.

Mr. JONES. I agree with you that the mayor could make the afford to take the chances of delay, and it also affects the practitioner. Of course, there are some lawyers who do a great deal of the work and take a joy in it, but the horror of the delay and the uncertainty of getting business disposed of is such that you find in the main the younger men of the bar doing the greater part of the work, the older men feeling that they simply cannot afford to do it. In many instances you see men who express themselves that way, who like the

work, and who feel joy in doing the work, and yet the delays are so great that it shuts out a great many others. Now, ninety-nine per cent. of what we call adjective law, which is the law of procedure has to be whipped into shape, and is proposing that the supreme court be given the power to make rules of procedure we are not going into unchartered seas. It has already been done in England. It is conservative. It is the especial duty of the supreme court to regulate legal procedure and to adopt the processes of justice to the necessities of the classes of litigants, and in the dischage of duties proposed by this section the supreme court shall have power to prescribe forms of action and to regulate pleading and practice and prescribe methods of proof and provide the way in which records shall be kept. The suggestions we propose are as follows:

(See Calendar of May 11, 1920, p. 36, Art. V, Sec. 3-C.)

ART. V, SECTION 3-C (New).

Regulative Power and Duty of Supreme Court.

It shall be the duty of the supreme court to regulate legal procedure in courts of record and to adapt the processes of justice to the necessities of all classes of litigants.

In the discharge of the duty imposed by this section, the supreme court shall have power to regulate forms of action, pleading and practice, proof, the way in which judicial records shall be kept, and the condition under which fees and costs may be remitted and counsel assigned without expense to litigants; and to regulate and control the activities of any agency, public or private, rendering legal aid.

Regulations when promulgated by the chief justice shall have the force of law until modified by the general assembly and shall operate to repeal all laws heretofore enacted inconsistent with such regulations.

Courts of records shall have the power to make their own rules not inconsistent with such regulations or with general laws.

Now, what authority have you set up here? You have the tribunal that is best fitted to do the work. You could not conceive of a tribunal better qualified to perform the duties you impose upon them. The members of the tribunal are going to be men who will face the problem from the day in which they live, so that they see before them the result of their work and how mistakes could be corrected. Now this tribunal will have a free hand on all questions of adjective law, and can decide how problems of litigation can be brought and disposed of before the court in the cheapest and most expeditious and satisfactory manner. You are not conferring upon the supreme court any greater rule-making power than the legislature has time and again conferred upon administrative officers. It is just about the same scope of power that is conferred by Congress time and time again upon administrative tribunals. You are putting up to the court this problem of administering justice to the poor in a way that can be worked out in detail and develop as experience develops it, and I do not believe that problem can be worked out in any other way. We all feel that something ought to be done, and I do not believe anybody has confidence that any machinery he has in mind is going to prove satisfactory. There is a very great difference of opinion as to whether the step should be taken in the readaptation of the judges of existing courts or the creation of new courts. Personally I am strongly against the creation of new courts. I have

a holy horror of the minor courts, because so frequently the result of that sort of thing is that you get the judicial trappings and mighty little else. If you can take a court made up of the best material that you provide an impossibility. You cannot get a record out of such organize that so that these men can administer justice to the poor, you are going to have justice administered to the poor. You have men of dignity, of character, and learning, and every now and then you strike a man with a special sort of genius for that sort of thing

Mr. FISHER. Have you anything concrete?

Mr. JONES. Unfortunately, no.

Mr. FISHER. Could you do it on the same lines as the appointments of matters?

Mr. JONES. My thoughts would be to do it through the common pleas courts. Suppose we had a large number of common pleas judges, fifteen or twenty; now by their rules or by the supreme court rules, they would set up a small claims court, and it should be the duty of one of those judges to hold that court. My thought would be that you could take men of the right sort of material who would hold that small claims court without counsel. He would sit there, send for the people and interview them and if he found he had all the information before him that was required he would go ahead and settle the case. If he found that other witness were required he would see that they were summoned. If he found that the situation was such that he would have to have counsel he would see that counsel was assigned. I would not be prepared to say really what would be the limit as to that.

The CHAIRMAN. You would have the court of common pleas, and that could be classified completely to meet any exigency.

Mr. JONES. Yes, it could be classified to meet any exigency. The minor courts have many disadvantages. To create minor courts, as many of those courts are, and provide that there shall be no appeal, you provide an impossibility. You cannot get a record out of such a court. It seems to me that you have got to recognize, when we talk about administering justice to the poor, that we are not talking about a simple job: it is not a job for a tyro. it is a job for the finished judicial officer. You can get the finished judical officer out of the court of common pleas: you are not going to get them out of the lower courts. That is just as true of courts as it is of money. You take good money and circulate it with bad money there is the awful contamination in the case, so that the good money goes out. The bad court besmirches the good court and you cannot keep up your standard. The office of judge does not mean the same thing in all judicial districts. It is different, for instance, in the rural communities. In the rural community you would not have any great difficulty in getting a good judge to sit on the bench. In the rural community the position of judge is one of great dignity. Generally speaking, in the populous districts, in the cities, for instance, the title "judge" means nothing. Nobody in the community knows what it is. He may be a police court judge, or a judge of any other court.

The CHAIRMAN. Would it not be a good thing for Philadelphia Mr. Jones, if you took the courts out of the public buildings and put them into a courthouse?

Mr. JONES. Yes, I think that is so, but I feel very much about that as I feel about gamblers, they are a mighty bad substitute for the

man. You could get a certain judicial number and they may perform the services, but the main thing is to get the men, men of character, men of learning, and men of dignity. When I go to the bar I am mighty sure that gowns would not add anything to the dignity of the court. We were very proud and are still very proud of it. Of course, when you go to the lower courts, you find that they view those trappings with an avidity that is startling. It is just in direct ratio, or in inverse ratio, to the need for it. So that I would hope to see the supreme court of the state thoroughly recognizing this duty for working out a proper scheme of procedure, and then seeing that the scheme works out, that it is tinkered out, remedied until it is reasonably efficient, and seeing the court of common pleas with men on the bench of character, men of character and with such a sense of social duty as to recognize that they are performing a very enviable job when they are administering justice to the poor. I believe that can all be done by drawing from the courts of common pleas, which, in the main, have been very satisfactory courts, and have been well manned in the state.

Now, there was one other feature that Mr. Smith talked about, it was a feature that troubled those of us who were working on this draft a good deal. I was very much impressed with what he said to the effect that we did not sufficiently size up the importance of the legal aid societies and the importance of establishing the proper relationship between them and the courts. We recognize that there ought to be some legal aid society because this could perform a great public function. Now, what is to be the relationship between the legal aid society and the court is a puzzle. We worked it out by giving the court the right to investigate and publish the result. The idea we had before us was that these legal aid societies would be institutions that would depend largely for their success upon public support, and if the court had the right to investigate and publish the result, probably that would be the only source of quasi jurisdiction that would be required. Mr. Smith would go very much farther than that, as I understand it, and he would give the court the power to create, to provide, regulate and control. I must confess that I can hardly agree with him in giving the court the power to create such societies. It may be well to give the court the power to regulate and control such societies. His idea is that these legal aid societies would be the agencies through which the poor people would get their assistance of counsel and that the courts ought to have the same sort of jurisdiction over those legal aid societies as they have over lawyers. Of course, every member of the bar is subject to the control of the court and it may be that it would be desirable to make every legal aid society subject to similar control.

There are a number of details in this article that I shall not dwell upon because I understand that Mr. Roberts is going to be before you on this article on Tuesday, and at that time he will probably have the article in the shape as he desires to have it submitted to you. There are a few other things in the draft that I would like to say a word or two upon if I may.

The CHAIRMAN. What would you do with these district courts?

Mr. JONES. Wipe them right out.

The CHAIRMAN. Wipe them right out. You would not use them at all?

Mr. JONES. I would not use them at all.

The CHAIRMAN. Then you would not have any justices of the peace.

Mr. JONES. We have a section of the constitution that takes care of that. Of course, you cannot rip off all of the present machinery. You have got to have a clause in the constitution that everything remains as it is until it is changed. I have a very strong desire to get rid of them.

The CHAIRMAN. What would the English race do without justices of the peace?

Mr. JONES. The English race has been used to justices of the peace, but the English justices of the peace are a very different sort of individual from our justices of the peace.

The CHAIRMAN. Some of them in the country would compare very favorably with the best of the English justices of the peace.

Mr. JONES. I think that when you touch that situation in Philadelphia you are up against a very difficult problem right away. I would have no faith in anybody attempting an immediate remedy. It is quite possible that the remedy might be to cut out all the jurisdictions altogether, except the landlord and tenant jurisdiction, and then to cut down the magistrates right away. You have to provide for the committing function. You have got to have officers to do that. Whether the municipal courts could take care of that committing function, I do not know. I cannot believe that the civil jurisdiction the magistrates have performs any useful purposes at all.

MEMORANDA AND BRIEFS No. 40.

LOCAL AND SPECIAL LEGISLATION.

Harrisburg, Pa., May 11, 1920.

Hon. Wm. I. Schaffer, Chairman.

Dear Sir: I understand you desire me to submit a brief on the subject of local and special legislation, with a statement of the reasons urged by Mr. Samuel B. Scott of Philadelphia, in favor of his proposed amendments to Article III, section 7-A, and Article XVIII-A, section 2-B.

Article III, section 7, of the constitution prohibits the general assembly from passing any local or special law with respect to a large number of enumerated subjects, covering almost the entire field of possible legislation.

Taken literally, this would have prevented almost all legislation, since it means on its fact that no law can apply to one human being or political subdivision which does not apply equally to all others. The necessity of an escape from this conclusion was early seen by the supreme court, and in 1875 it was decided that the constitutional restriction did not, under certain circumstances, apply to legislation for classes of persons or things (Wheeler vs. Philadelphia, 77 Pa. 338). In that case an act was approved which divided cities into three classes and provided a special method of increasing the indebtedness of those of the first class.

The possibilities of classification are, of course, boundless. If cities can be divided into three classes, why not into an indefinite

number, limited only by the number of cities? The supreme court saw this danger and in Ayar's Appeal, 122 Pa. 266, refused to permit a division of cities into seven classes. It was there declared that classification was only proper where there exists a necessity "springing from manifest peculiarities clearly distinguishing those of one class from each of the other classes, and imperatively demanding legislation for each class separately that would be useless and detrimental to the others."

The application of this rule has caused a great deal of doubt and litigation. The supreme court must in every instance determine whether there exists those manifest peculiarities which justify classification. In many cases no one can tell in advance whether or not the court will approve a given classification. The determination of the question is, by its very nature, not subject to fixed and easily applied rules, so that a very important field of legislation is frequently clouded with doubt for months or even years after the passage of statutes within its bounds.

These observations are true of local but not of special legislation. Local legislation is, of course, only a kind of special legislation, a kind which concerns itself with the special needs of localities. It is the kind of special legislation for which there is constant and legitimate pressure from all parts of the state. The other kinds of special legislation, such, for instance, as statutes giving special benefits to one class of the community, are passed much less frequently and give rise to so little doubt and litigation as to justify the conclusion that the law with respect to them is satisfactory. Examples of this kind of legislation are statutes giving to those engaged in certain occupations special remedies for the collection of debts.

Confining this brief then to local legislation it is to be noticed first that classification according to population is much the commonest form. The supreme court recognizes the fact that communities of different sizes need different laws but the difficulty of course lies in determining how great the discrepancy in size must be to warrant a different law, and what kind of a different law the discrepancy will warrant.

Thus, as I have pointed out, three classes of cities have been approved, but not seven classes. This latter decision seems to have put an end to any attempt further to classify cities according to population. But a difficulty still exists in the use of these classes. There cannot be differences in general law such, for example, as the law of contracts or of evidence, between cities of different classes; there can only be differences with respect to the law regulating municipal machinery—"relating to the exercise of corporate powers or to corporate officers and their powers and duties" (Ruan Street, 132 Pa. 257).

But the application of this rule is not easy. In the Ruan street case, for instance, the supreme court held that cities could not be classified for the purpose of providing a special method of opening streets in those of the first class, although it would certainly seem that this related to the exercise of corporate powers.

In legislation with respect to counties, much more extensive classification has been permitted; but it is impossible to tell in advance whether a given statute will be approved by the supreme court. For instance, an attempt to classify separately counties of between 100,000

and 150,000 in population, for the purpose of legislation with respect to the fees of county officers, was unsuccessful, because the supreme court held that the existing constitutional number of 150,000 (Article 14, section 5), is the dividing line between the only two permissible classes of counties, so far as legislation in regard to fees is concerned. (McCarthy vs. Commonwealth 110 Pa. 243).

An act which gave a right of appeal to the court of common pleas from real estate assessments in all counties of less than 500,000 population was declared unconstitutional because it excluded Philadelphia county. (Scranton v. Silkman, 113 Pa. 191).

In each of these cases there was an excellent argument on both sides of the question and no one could do more than guess which would prevail with the supreme court

So with other kinds of classification not based upon differences in population. The supreme court will not permit a classification of counties according to whether or not they are coextensive with cities, (Blankenburg vs. Black, 200 Pa. 629). Of course Philadelphia is the only such county, but this very fact makes its problems different from those of any other county.

An act providing for the consolidation of two contiguous cities in the same county was held unconstitutional, because at the time of its passage it applied only to Pittsburgh and Allegheny, (Sample vs. Pittsburgh, 212 Pa. 533); but a similar act providing for the consolidation of any two nearby cities was held valid, (Pittsburgh's Petition, 217 Pa. 227).

The test in these cases is the degree of probability that the class will ever increase. The supreme court thought that the chance was very small that any city except Philadelphia would ever become coextensive with a county, and so they declared the act in Blankenburg vs. Black to be in effect local legislation for Philadelphia. So too, with the act in regard to two cities in the same county. Obviously the determination of the requisite degree of probability is a difficult matter, and the necessity for it leaves important statutes in doubt until approved or disapproved by the supreme court.

It would be impossible in the limits of this brief to present a complete survey of the litigation which has occurred with respect to the whole subject of local and special legislation. I have simply given enough illustrations to show that the evil of the present situation lies in its uncertainties.

Mr. Scott's suggested amendments are intended to dispel these uncertainties, so far as possible, first, by partially enumerating permissible kinds of classification, and second, by extending the principle of "home rule" so as largely to increase the permissible kinds of local legislation.

Mr. Scott's suggested amendments together with his explanation of them are as follows:—

1. "Amend Article XVIII-A by inserting a new section 2-b as follows:—

> *"The General Assembly may delegate to the municipalities power to create, change, and regulate their own organization and to regulate their own affairs."* (Page 89 of the Calendar for May 11, 1920.)

"This section suggested is intended to make home rule for municipalities possible. It is merely permissive in its nature, and, until

acted upon by the legislature, would introduce no change into our present system. The general principles of local home rule are so widely approved that the chief question involved is the practicability of the particular method by which the principle is to be achieved. The chief danger to be apprehended is that of the difficulty of drawing the line between those things which are properly the affairs of a particular municipality and those which are of general interest.

"Under the clause as suggested the whole matter would rest with the legislature and there could be no conflict of authority. The power to delegate is, of course, also the power to resume, so that if any municipality abused the power delegated to it by the legislature it could resume the power so delegated and thus at once cure the abuse. If the line of demarcation between local affairs and those of general interest had never been the subject of judicial determination, there would, of course, be a considerable danger in proceeding in the dark, but as a matter of fact, this question has frequently arisen in this state in the past. It has been frequently held that cities can be classified only for the purpose of legislation which regulates their local interests, and there have been many cases which discussed the question as to what are and what are not "local interests." The case of City of Scranton v. Whyte—148 Pa. 419 (1892) not only discusses this question itself, but collects a number of authorities which also discuss it."

Mr. Scott also proposes to amend Article III, section 7-A, to read as follows—

> *"No law shall be held to be a local or special law which operates equally upon every member of a class. The general assembly may classify municipalities but shall not create more than seven classes of cities, counties or school districts, nor more than five classes of any other municipality upon the basis of population. The general assembly may classify municipalities upon the basis of conditions requiring special regulation, including the basis of the coincidence of boundaries of different municipalities, or other relations between them requiring special regulation.*
>
> *"No law shall be held to be local or special, which, being otherwise of a general nature, does not go into effect as regards any particular municipality until affirmatively adopted by the authorities or people of said municipality, as provided by law."* (Page 15 of the Calendar for May 11, 1920.)

"The subject of local and special legislation is intimately bound up with that of home rule. The pressure for local legislation is largely an expression of the ineradicable desire of the populace of the several localities to have their local affairs regulated in the way that seems to fit them. The abuse had become so great by 1873 that the present constitution forbade such legislation entirely. The constitution, however, could not prevent the desire for local legislation and for separate treatment of the various communities. Indeed, the necessity for such local treatment was so great that the theory of classification was immediately invented by the legislature and upheld by the court (Wheeler v. Philadelphia, 77 Pa. 338.)

"The great mass of litigation which has accumulated upon the subject of local and special legislation is due to the fact that the de-

sire for such local treatment still continues and seeks to find expression through an enlargement of the theory of classification, while the supreme court having been driven to uphold the theory of classification only by necessity, has been constantly endeavoring to limit its application.

"If the home rule clause suggested above be adopted, the desire for local and special legislation would practically cease, but if such a home rule clause is not adopted it becomes of great importance to study the provisions of Article II, section 7, in the light of experience, and to endeavor what improvements can be made.

"It is evident that the subject has not escaped the attention of the commission, for the preliminary draft shows the addition of section 7-A. The apparent purpose of this section is to enlarge the right of the legislature to classify, and it, no doubt, intended as a liberalization of the restrictions contained in the old section 7. It is respectfully submitted, however, that the actual result of the adoption of section 7-A as shown in the preliminary draft would be greatly to reduce the power of the legislature in the matter of classification.

"Under the present constitution, as interpreted by the supreme court, the legislature has the power to classify not only upon the basis of population but upon any basis which seems to the legislature to be proper for discrimination and which is not a mere device for evading the prohibition against local and special legislation. For instance, townships are classified not according to their number of population, but according to the relative density of population.—Commonwealth v. Blackley—198 Pa. 373 (1901.)

"County bridges have been classified according to a very elaborate scheme. In Seabold v. Commissioners—187 Pa. 318 (1898) the Court says, page 323:

> 'The bridges which are made into a separate class by the act of 1897 and authorized to be rebuilt must have been:
>
> First, over a river or stream forming the boundary line between two counties;
>
> Second, on the line of a public highway or deemed necessary for the us of the traveling public;
>
> Third, owned and maintained by corporations or private persons or built by public subscriptions;
>
> Fourth, used exclusively for vehicle and foot purposes;
>
> Fifth, destroyed by ice, flood or otherwise or abandoned by the owners and rebuilt (replaced) on another site.'

"These instances are not exhaustive, but are sufficient to show that at present the legislature has power to classify on other grounds than that of population.

"The wording of section 7-A in the tentative draft expressly gives the right to classify according to population, and thereby by implication denies the right to classify in any other way. Thus the present power of the legislature to provide for local diversities would be vastly curtailed.

"Turning now to the text of the clause as suggested in this brief, attention will be given to each portion of it in order to show the reasoning on which it is based. The first sentence is:

> 'No law shall be held to be a local or special law which operates equally upon every member of a class.'

"This sentence, or one of similar import, is necessary to make clear the connection between section 7 and section 7-A. Section 7 forbids local or special legislation, and section 7-A is added for the purpose of showing what things are not local and special legislation, which might be held to be so in the absence of section 7-A. It is important that this should be made clear by the addition of the sentence suggested.

"The second sentence is:

'The general assembly may classify municipalities but shall not create more than seven classes of cities, counties or school districts, nor more than five classes of any other municipality upon the basis of population.'

"This is nearly the same as section 7-A of the draft but is more general in terms, embracing all possible kinds of municipalities. The total absence of "poor districts" from the draft of the tentative amendment might well cause difficulty. It is also thinkable that other kinds of municipalities may be created in the future.

"The next sentence is:

'The general assembly may classify municipalities upon the basis of conditions requiring special legislation, including the basis of the coincidence of boundaries of different municipalities, or other relations between them requiring special regulation.'

"This is a re-statement in the broadest possible terms of what is conceived to be the law at present, but the law at present has grown up under the doctrine of necessity, and the supreme court seems to have such a bad conscience on the matter, that it is constantly holding down the power of the legislature to the smallest possible amount; by stating the doctrine clearly in the constitution, the course of legislation and judicial decisions in the future will be much smoother.

"The refernce to the coincidence of boundaries of different municipalities is made for fear the supreme court, under the influence of such cases of Blankenburg v. Black, 200 Pa. 629. (1901)—might hold such coincidence, or other important relation between them was not a condition requiring special regulation. As a matter of fact, the condition of the county of Philadelphia is different from that of other counties in many ways, due to its special relation to the city, and there ought to be no doubt as to the power of the legislature to provide accordingly.

"The final sentence is:

'No law shall be held to be local or special, which, being otherwise of a general nature, does not go into effect as regards any particular municipality until affirmatively adopted by the authorities or people of said municipality, as provided by law.'

"This will permit a very practicable species of home rule which has already been adopted with some success by the legislature but which is so beset with judicial difficulties as to make it practically impos-

sible for the legislator to know when his act will be constitutional and when it will not, if he attempts to leave the matter to the adoption of local authorities.

Frost v. Cherry—122 Pa. 417 (1888).
Appeal of City of Scranton School District—113 Pa. 136 (1886).
Lehigh Valley Coal Company's appeal—154 Pa. 44 (1894).

"It might be objected that this method would lead to considerable diversity among the different parts of the state. This unquestionably would be true, but it would be a diversity always tending to uniformity as locality after locality adopted general legislation. Also, it would vastly decrease the pressure for special legislation based on the theory of classification. At present, if some locality feels that it has a distinct need it secures the passage of a law based on some classification which will affect that community alone. This classification must then run the gauntlet of the supreme court, though perhaps not for years after it was adopted, and the chances of its being declared unconstitutional are very great.

"If the principle adopted in the last sentence in the paragraph suggested by this brief were in effect, the same community could secure the adoption of a general law with local option provisions. This would be clearly constitutional, would be no more injurious than the classification and would give other communities the advantage of adopting the legislation if it fitted their needs. This provision goes very little further than the present constitution as interpreted by the court, but it clears up a very complicated situation and gives, unquestionably, a power to the legislature which could be exercised to the very great benefit of many localities."

Very truly yours,

WM. DRAPER LEWIS,

Secretary.

MEMORANDA AND BRIEFS No. 41.

AMENDMENTS ON CALENDAR OF MAY 11, 1920.

ARTICLE I, II, III AND IV.

REASONS IN SUPPORT SUBMITTED BY PROPONENTS.

Harrisburg, Pa., May 11, 1920.

Hon. William I. Schaffer, Chairman,

Dear Sir: The propopents of amendments, besides in many cases making oral arguments before the commission in favor of their suggestions, submitted written explanations and in some cases formal briefs. I submit herewith extracts from the various briefs submitted in writing by the proponents of amendments of Articles I, II and III. No reason in writing were submitted by the proponents of amend-

ments to Article IV. I have not submitted herewith the explanations and reasons submitted in favor of the following amendments which are the subject of separate briefs:

(1) Amendments submitted by Mr. John A. Voll, Commissioner, to Art. II, section 1, on the Initative and Referendum. See Brief No. 33.

(2) Amendment by American Proportional Representation League, C. G. Hoag, Secy., to Art. II, section 17, on Proportional Representation. See Brief No. 28.

(3) Amendments submitted by Samuel B. Scott of Philadelphia, to Art. III, section 7, and Art. III, section 7-A, on Local Legislation. See Brief No. 40.

(4) Amendment submitted by Kenneth L. M. Pray, Secy., Public Charities Association of Pennsylvania, to Art. III, section 15, on Charitable Appropriations. See Brief No. 36.

The Civil Service Reform Association has distributed among the members of the commission and placed on file in the secretary's office, copies of a printed brief in favor of their suggested amendments to Art. IV. (See Calendar May 11, 1920, Art. IV, sections 8-A and 8-B, page 27.)

ARTICLE I.

DECLARATION OF RIGHTS.

Section 1. NATURAL RIGHTS OF MANKIND.

(Calendar for May 11, 1920.)

AMENDMENT SUGGESTED BY THE SECRETARY.

"The adoption of the amendment suggested would place in the constitution a clear declaration that every person within the jurisdiction of the state was protected in his life, liberty and property. In the present constitution there is no such clear declaration. Article 1, section 9 merely provides than a person accused of crime cannot be deprived of life, liberty or property. Protecting life, liberty and property in the exact words of the 14th amendment to the federal Constitution will tend to make uniform the state and federal decisions on the extent of the fundamental rights of the individual; a most desirable result." (Letter to the chairman, May 5, 1920.)

Section 4. NO DISQUALIFICATION FOR RELIGIOUS BELIEF.

AMENDMENT SUUGESTED BY CIVIC CLUB OF ALLEGHENY COUNTY.

"It would be strange and unfortunate if there should be a judicial injury made into the religious views of any official as a test of his right to hold office. White, in his work on 'The Constitution,' shows that a member of the convention of 1873 declared that this section, as it now stands in the constitution, would, as he understood it, disqualify Universalists, who have some heretical notions as to the future state of punishments."

AMENDMENTS SUGGESTED BY MR. JOHN THIEL AND BY MR. W. J. FITZGERALD:

"I would strike out the phrase, 'and a future state of rewards and punishments,' as being unnecessary, superfluous, and probably an ob-

solete religious doctrine. Thus any one believing in the existence of a Supreme Being, no matter what his religious sentiments might be, would be qualified to hold any office, etc., and an atheist would be disqualified. I believe that this was and still is the intention of this section. As a modern and more enlightened alternative for the phrase which I propose to strike out, would substitute one expressing merely a belief in a future life. If the transgressor is punished before death, as may often happen, it would be illogical to suppose that he would also be punished in the future life. If the virtuous man is rewarded before death, as may also happen, would he again be rewarded in the future life?" (Letter to the secretary, May 30, 1920, from Mr. Thiel.)

"The present reading may disqualifiy certain agnostics, who may be worthy citizens. I am not an agnostic, but suggest that their view point be considered." (Letter to the secretary from Mr. W. J. Fitzgerald.)

AMENDMENT SUGGESTED BY THE HONORABLE R. H. KOCH, OF POTTSVILLE, PA.:

" 'Almighty God' is mentioned in the preceding, or third section and I see no reason why it should not be mentioned in the fourth section. There are heathen gods and pagan gods, and I think the words, 'a God' may be considered in too generic a sense, although 'God' begins with a capital letter. 'A' is indefinite; 'The God' would be better, and 'God of the Bible' would put the matter beyond question."

Section 5-A. RIGHT TO VOTE.

AMENDMENTS SUGGESTED BY THE CIVIC CLUB OF ALLEGHENY COUNTY:

"The proposed new section seems to be unnecessary except as to the matter of sex, the fifteenth amendment to the federal constitution covering the question of race and color. The meaning of the section as proposed, insofar as it relates to holding office is not clear. If it means that there shall be no distinction of sex in respect to holding office, it is bad. There are some offices that ought to be held by women and some which ought to be held by men. For example, it is wise to have matrons in police stations, jails, asylums, and other places where women and girls are detained, and the legislature should not be denied the power to exclude men from holding the office of such attendants. It would also be unwise to forbid laws prescribing the set of certain police officers and of officers whose duties may be so arduous as to be unsafe for women. If the proposed section is intended to mean that persons of either sex may hold any office except where the general assembly (for reasons deemed adequate by the supreme court) otherwise provides, it would be well to say so, and thereby save the supreme court from the necessity of amending the constitution by judicial interpretation. The right to vote will give women such political power that it is inconceivable that laws will be made to deny them the right to hold office which they deem themselves fitted to hold."

AMENDMENT SUGGESTED BY LEGISLATIVE REFERENCE BUREAU.

"As this section now reads the question might be raised whether it is self-enacting, or whether it might require legislation amending our present election and taxation laws by inserting therein the word 'female.' To avoid all doubt, we would suggest that a clause be added reading into the election and into the taxation and assessment laws the construction that wherever the word 'male' is used 'female' is to be included." (Letter to the secretary, April 5, 1920.)

AMENDMENT SUGGESTED BY WATSON B. ADAIR, OF PITTSBURGH:

"I have omitted reference to race and color, thinking that that point is sufficiently covered by the Federal Constitution, though the words, 'race, color or,' could be inserted before the word (sex,' if it is desired to make the section more comprehensive." (Letter to Prof. Thorpe, April 16, 1920.)

Section 6. TRIAL BY JURY.

AMENDMENT SUGGESTED BY THE CIVIC CLUB OF ALLEGHENY COUNTY:

"So much time and expense can be saved by trying ordinary claims for debts before a judge without a jury that it seems wise to require that those who want jury trials in such cases should pay for them.

"The necessity for a unanimous verdict in other than the most important crimes does not seem to exist. The power of one juror to control or prevent a verdict is frequently abused."

AMENDMENT SUGGESTED BY H. K. SIEBENECK, OF PITTSBURGH:

"Ex-President Judge Way of the Allegheny County Court is authority for the statement that in contract cases a jury trials is limited to crimes and personal injuries, libel, etc., in-The jury trial, therefore, is an added burden to the community and in equity the expense should be borne, at least in part, by the person demanding the same. The popular desire for jury trials is limited to crimes and personal injuries, libel, etc., included in the word 'torts.'" (Letter to the secretary).

AMENDMENT SUGGESTED BY THOMAS H. GREER, OF BUTLER, PA.:

"You may have experienced the results occasioned by the rule that requires unanimity of twelve jurors to find a verdict in a civil or criminal trial. That law is possibly the most antiquated and absurd law that the public has to deal with. I am informed that in Ohio, and possibly other states, that nine of twelve jurors may find a verdict, which is consistent with common sense and surely cannot defeat the ends of justice so long as we persist in jury trials. A majority of either the supreme or superior court is all that is necessary and why should there be an unanimous verdict by a jury?" (Letter to the secretary, March 6, 1920.)

Section 7. FREEDOM OF THE PRESS.—LIBEL.

AMENDMENT SUGGESTED BY THE HON. R. H. KOCH, OF POTTSVILLE, PA.:

"This provision necessitattes the continuance of the grand jury in Pennsylvania." See further under section 10.

Section 9. RIGHTS OF ACCUSED IN CRIMINAL PROSECUTIONS. (Calendar for May 11, page 4.)

AMENDMENT SUGGESTED BY THE HON. R. H. KOCH, OF POTTSVILLE, PA.:

"This provision necessitates the continuance of the grand jury in Pennsylvania." See further under section 10.

AMENDMENT SUGGESTED BY RICHARD E. COCHRAN, OF YORK, PA.:

"Section 9 provides that a defendant cannot be compelled to give evidence against himself. While section 10, article VIII, provides that in trials of contested election, etc., no person shall be permitted to withhold his testimony on the ground that it may criminate himself or subject him to public infamy. This is in direct conflict with section 9, article I, and I suggest that section 9, Article I be amended so as to read 'except as provided in section 10 of Article VIII of this constitution he cannot be compelled to give evidence against himself.' "

Section 10. CRIMINALS INFORMATION.—TWICE IN JEOPARDY.—EMINENT DOMAIN

AMENDMENT SUGGESTED BY THE HON. R. H. KOCH, OF POTTSVILLE, PA.:

"This provision necessitates the continuance of the grand jury in Pennsylvania. I am sure that the grand jury does far more harm than it does good. I have known scores and scores and scores of bills of indictment that were ignored by grand juries where the accused parties should have been brought to trial. I have known instances of men outrageously beaten and cut whose cases were ignored by the grand jury and who were visited with the costs. The grand jury is a secret body. In their oath, the grand jurors swear that, 'The commonwealth's counsel, your fellow's and your own, you shall keep secret.' In the days when 'Men were suspected whom none wished or dared to accuse,' (I Bouvier, page 640, 14th Edition), the grand jury was a convenient means, on account of its secrecy, to make a presentment; but there is no occasion for that now. To ignore a bill which is well founded and then to put the costs upon the prosecutor is to do him a great injustice and to leave him without a remedy. Grand jurors too frequently disregard their oath entirely and do as they please with bills of indictment. Corrupt influence or favoritism frequently controls their disposition of indictments. The grand jury is, generally speaking, a useless and costly piece of machinery in the administration of criminal courts and should be used only to conduct investigations where there is great

public clamor of criminal conduct by public officers, on which occasion a grand jury could be specially summoned. To omit the sentence above quoted would put it wholly within the power of the general assembly to say whether the grand jury system, as it at present exists, should be continued."

Section 11. COURTS TO BE OPEN.—SUITS AGAINST COMMONWEALTH.

AMENDMENT SUGGESTED BY H. K. SIEBENECK, OF PITTSBURGH, PA.:

"One of the worst absurdities yet remaining in our judicial system is that the Commonwealth, the fountain of justice, may do injustice to its citizens and not pay the penalty. The poorest of townships is liable for not properly maintaining its roads, whereas the richest of commonwealths escape for similar negligence. The commonwealth is so patent a factor in the road situation today that this anonaly should be rectified and the legislature *required* to put the commonwealth in the same position as a turnpike company would be relative to liability. The forum and the excutionary process, of course, could be molded to suit the requirements of the commonwealth."

Section 26-B. NEW.

AMENDMENT SUGGESTED BY CIVIC CLUB OF ALLEGHENY COUNTY:

"It seems to be true that the civil rights guaranteed by the Constitution apply only to *citizens* of the Commonwealth and not to the *inhabitants* generally. Thus a child born abroad, even though it has lived with its parents twenty years in this country, does not, ipso facto, become a citizen, and may be summarily ejected by arbitrary power. The addition suggested would *not* confer political privileges on non-citizens."

ARTICLE II.

THE LEGISLATURE.

(Calendar for May 11, 1920.)

Section 11. POWERS OF EACH BRANCH.—EXPULSION.

AMENDMENT SUGGESTED BY CIVIC CLUB OF ALLEGHENY COUNTY:

"The corrupt practices act in the different states were forced to draw a distinction between candidates for mayor, judge, and so forth, on the one hand, and legislative candidates on the other. The legislative candidates, owing to similar sections of other constitutions, cannot be prevented from taking office, no matter how corrupt they may be. It is submitted that the time has gone by when the legislature needs this particular protection against the encroachment of the executive, as it may have needed it 150 years ago. To-day corruption is the great source of political evil."

Section 15. PRIVILEGES OF MEMBERS.

AMENDMENT SUGGESTED BY CIVIC CLUB OF ALLEGHENY COUNTY:

"The underscored words merely carry out the idea emphasized in section 11."

Section 16. SENATORIAL DISTRICTS.—RATIO.

AMENDMENT SUGGESTED BY THE HON. ALEX. SIMPSON, JR.:

"During Governor Pennypacker's term it was absolutely impossible to comply with the provisions of this section, owing to the fact that Lebanon county, if I remember right, was entirely surrounded by other counties entitled to a full ratio and did not itself have even half a ratio. In view of a possible recurrence of this difficulty, would it not be better that there should be a lack of contiguity between two or more counties forming one district than that there should be so serious a 12th, 1920.)
difference in the number of a senator's contituents? If this suggestion is approved the difficulty may be overcome by inserting after 'contiguous territory' the words 'as nearly as may be' or something akin thereto." (Letter to secretary, April 12th, 1920.

Section 18. LEGISLATIVE APPORTIONMENT.

AMENDMENT SUGGESTED BY CIVIC CLUB OF ALLEGHENY COUNTY:

"The failure of the legislature to act promptly in the matter of apportionment has long been a scandal. Therefore the suggested penalty for such failure."

AMENDMENT SUGGESTED BY THE HON. ALEX. SIMPSON, JR.:

"In the past the legislature has repeatedly failed to obey this provision. Would it not be well, therefore, to provide that if they adjourn without compliance therewith, that the governor shall appoint a commission of, say, seven members, whose duty it shall be to make a proper apportionment, which when approved by the governor shall have all the force of a statutory apportionment; said commission to be drawn from all parts of the state, to have the qualifications of members of the senate, to hold no office of honor, trust or profit under the state or any municipality, and not more than three thereof to be members of any one political party." (Letter to secretary, April 12th, 1920.)

ARTICLE III.

LEGISLATION.

(Calendar for May, 11, 1920.)

Section 3. SUBJECT OF BILLS—TITLE.

AMENDMENT SUGGESTED BY LEGISLATIVE REFERENCE BUREAU:

"The insertion into this section of a requirement that laws extending other laws shall set forth the title of such laws, may

upset the rule established by the courts as to the extension of procedure acts. We think it is well settled by a number of cases that an act, which, for instance, attaches to the power of eminent domain, the procedure for the assessment of damages outlined in a prior statute is constitutional, even though the procedure is not re-enacted at length or notice thereof given in the title. The clause of this section 3, as now drafted might require the citation in the title of such acts which were extended. We would suggest that the word 'extending' be stricken from this section." (Letter to secretary, April 5, 1920.)

Section 4. THREE READINGS. — AMENDMENTS. — FINAL VOTE.

AMENDMENT SUGGESTED BY CIVIC CLUB OF ALLEGHENY COUNTY:

"This would afford needed publicity and greatly expedite legislative procedure."

AMENDMENT SUGGESTED BY LEGISLATIVE REFERENCE BUREAU:

"The reading of bills at length on three different days in each house is a physical impossibility. The one purpose which this clause serves is to prevent hasty legislative action. No member of the legislature should be placed in the position where he is called upon, in the discharge of his duty, to violate the constitution, which by his oath of office, he has sworn to support, obey, and defend. We suggest that the words 'read at lenght' be stricken out and the word 'considered' be submitted. This will bring the constitution and legislative procedure into harmony, and relieve conscientious members of the legislature from embarassment." (Letter to secretary, April 5, 1920.)

Section 6. THE REVIVAL AND AMENDMENT OF LAWS.

AMENDMENT SUGGESTED BY RICHARD E. COCHRAN, OF YORK, PA.:

"I think on the subject of legislation this section in the existing constitution is much clearer and much better expressed than the proposed substitute."

AMENDMENT SUGGESTED BY LEGISLATIVE REFERENCE BUREAU:

"Section 6 of Article III provided that a law amending, reviving or extending the provisions of a law shall set forth in full the part of the law affected and an amending law shall also set forth in full the part of the law affected. The use of the word 'affected' might be questioned. If this word is used in the first clause of the section as being synonymous with 'amending, reviving or extending,' there could be no objection, but it is possible that the courts might construe this word as requiring, in amending statutes, the citation of a very large

part of the act, on the presumption that the proposed amendment affected a large part of the act." (Letter to secretary, April 5, 1920.)

Section 6-A. (NEW). WHEN NEW LAWS SHALL BECOME EFFECTIVE.

AMENDMENT SUGGESTED BY THE CIVIC CLUB OF ALLEGHENY COUNTY:

"This is deemed a wise provision, not only to clear away any doubt there may be as to when law is effective, but to the end that new legislation may not cause confusion by becoming too speedily effective."

Section 7. SPECIAL AND LOCAL LEGISLATION LIMITED.

AMENDMENT SUGGESTED BY HON. ALEX. SIMPSON, JR.:

"The paragraph on municipalities does not provide for 'towns or villages.' Would it not be wise, therefore, in lieu of the provision 'incorporating cities, towns or villages or changing their charters' to insert 'incorporating municipalities or changing their charters?" (Letter to secretary, April 12, 1920.)

Section 7-A. CLASSIFICATIONS, ETC.

AMENDMENT SUGGESTED BY MR. H. K. SIEBENECK, OF PITTSBURGH, PA.:

"The workmen's compensation act, as at present framed, embraces all classes of employees. There is a supplement excepting farm hands and domestic servants. To have inserted this exception clause in the body of the act, it was believed generally would have violated the provision against special laws regulating labor. The interpolation suggested would avoid this trouble."

AMENDMENT SUGGESTED BY LEGISLATIVE REFERENCE BUREAU:

"Section 7-A is a new section inserted for the purpose of confirming the power of the legislature in classifying municipalities; also to fix a maximum classification for the several municipalities. As the section is now drafted the classification made by the general assembly is for the purpose of legislation. The use of this broad term might be construed to upset the present rule laid down by our courts as to the necessity and reasonableness of a classification. In other words a construction might be adopted which would hold any classification legislation good on the ground that it was made for the purpose of legislation." (Letter to secretary, April 6, 1920.)

AMENDMENT SUGGESTED BY THE NATIONAL MUNICIPAL LEAGUE:

"We are thoroughly in accord with the purpose which you have had in mind in your draft of section 7-A, Article III, which is to confer upon the legislature greater freedom in dealing with varying local situations. The effect will be to

make the constitution more elastic at this point. We wish, however, to call your attention to the fact that you are here setting up seven classes of counties and school districts and virtually twelve classes of urban districts. We believe this extension classification to be unwise in that it will confer upon the legislature the whole power of special and local legislation which proved so disastrous to the welfare of the state prior to 1874. The legislature by arranging and re-arranging the classification of counties, cities and boroughs will be able to evade all the salutatory provisions of Section 7, Article III of the present constitution. You are handing back under a new guise the the old power which is so generally discredited. In this connection we would call your attention to the experience of Ohio between 1870 and 1902 during which time the courts permitted the legislature to create many classes of municipalities, with the result that the people of the state were subjected to all the evils of special legislation under another form.

"The indispensable elasticity in laws governing municipalities is secured by the second sentence of our proposed substitute which permits the legislature to pass laws governing the organization and government of any municipality or class, which shall be operative only upon the affirmative vote of the electors within the municipality to be affected. Laws which would otherwise be special or local shall not be deemed to fall under the prohibitions against such legislation. Under our proposed section the rights of the community are thoroughly safeguarded while full provision is made for meeting diverse situations throughout the Commonwealth."

Letter to the Commission on Constitutional Amendment and Revision, April 19, 1920.

Section 8. NOTICE OF LOCAL OR SPECIAL BILLS.

AMENDMENT SUGGESTED BY LEGISLATIVE REFERENCE BUREAU:

"In section 8, Article III, we would insert a clause making it unnecessary to give notice of any bill designed simply for the repeal of a local or special law. The next to the last paragraph of section 7 of this article contains the provision that 'Laws repealing local and special acts may be passed.' The insertion of this clause leads us to believe that it was not the intention of the framers of the constitution of 1873 to require the advertising of such bills. Such advertisement is now required by the act of February 12, 1874, P. L. 43, enacted to carry into effect the provisions of section 8 of Article III.

"It has been repeatedly held that where a general act is passed which effects a repeal of local or special act, notice of this repeal is not required. Why should a different rule prevail when the act is a repealer only of a local or special act? The repeal of local and special acts should be encouraged and not hampered. Their repeal aids uniformity. This notice should not be permitted to stand in the way." (Letter to secretary, April 6, 1920.)

Section 10. OFFICERS AND EMPLOYES.—PAYMENTS.

AMENDMENTS SUGGESTED BY H. K. SIEBENECK AND BY THE CIVIC CLUB OF ALLEGHENY COUNTY:

"It is submitted that this would be a great money saver."

Section 11-A.

AMENDMENT SUGGESTED BY THE CHAMBER OF COMMERCE OF PITTSBURGH:

"The division of fines and penalties has been and is the cause of unjust prosecution and the levying of blackmail by irresponsible informers and other persons who have a financial interest in the results of such information. We believe that this grievance should be abolished by the constitution." (Letter to secretary April 17, 1920.)

Section 13. EXTENSION OF TERMS.

AMENDMENT SUGGESTED BY H. K. SIEBENECK, OF PITTSBURGH:

"We are living in a period of great currency depreciation and it may be that the opposite situation of affairs will have been reached by 1931 when the dollar may have double its normal purchasing capacity. A decennial adjustment of salaries is obiviousuly expedient.

AMENDMENT SUGGESTED BY G. W. WILLIAMS, OF PITTSBURGH:

"It does not seem to me that there is any good reason for providing that the salary or emoluments of a judge may be increased during his term of office. The settled policy of the commonwealth has always been otherwise." Letter to secretary, March 30, 1920.)

Section 16. PAYING OUT PUBLIC MONEYS.

AMENDMENT SUGGESTED BY THE HON. ALEX. SIMPSON, JR.:

"For a long time I have felt strongly that the State's money should not be appropriated to institutions not under its direct control. In the Penna. Bar Association Report for 1902 (pages 3 to 11) will appear an article on the subject, showing the genesis of these appropriations and the reasons there against. No one has answered, so far as I know, Judge Sharswood's statement in regard thereto appearing on page 11." (Letter to the secretary April 12, 1920.)

AMENDMENT SUGGESTED BY THE HON. C. STUART PATTERSON, OF PHILA.:

"Section 15 Article III requires the governor to submit a budget. In my judgment this will not be effective unless it is supplemented by some restraint on the introduction by private members of bills making appropriations which have not been submitted to and approved by the governor. Otherwise there will be log-rolling, that is, A will move an appropriation, and obtain support for his measure by promising to vote for like

measures urged by other members. The only way in which the English Parliament makes its budget system effective is by a standing order forbidding the consideration of individual appropriations by bills which have not been submitted to and approved by the responsible ministry." (Letter to secretary, April 16, 1920.)

AMENDMENT SUGGESTED BY THE LEGISLATIVE REFERENCE BUREAU:

"In order to protect the governor in his action on the appropriation bill, this section should contain a clause making it mandatory upon the general assembly to enact all revenue measures and present them to the governor at least ten days before the adjournment, as is provided for the general appropriation bill." (Letter to secretary April 6, 1920.)

AMENDMENT SUGGESTED BY THE CIVIC CLUB OF ALLEGHENY COUNTY:

"It is recommended that in the second paragraph of section 15, where the word 'beneficiaries' occurs, it should be changed to read 'institutions, corporations and associations.' This change being suggested because the word 'beneficiaries' implies a selection from among the agencies of any class; whereas, all agencies conforming to the imposed standards should obtain state aid as a *right* not as a *favor*."

Section 18. CERTAIN APPROPRIATIONS FORBIDDEN.

AMENDMENT SUGGESTED BY JOHN THIEL, OF PHILADELPHIA:

"It seems illiberal and uncharitable to prohibit appropriations to communities, as is apparently done in this section. The legislature should be free to afford financial aid to communities that may from time to time be suffering from grave disasters or calamities." (Letter to secretary, March 30, 1920.)

AMENDMENT SUGGESTED BY THE LEGISLATIVE REFERENCE BUREAU:

"In the budget system established by section 15, it clearly appears that no appropriations are to be made to separate institutions, but that all appropriations for charitable, benevolent or educational institutions are to be made to the classes of institutions in lump sums. If, therefore, an institution cannot be named in an appropriation bill, the question whether or not an institution is denominational or sectarian is no longer a legislative matter, but is a fact to be ascertained by the agency of the commonwealth, which make the disbursement. It is suggested that this section 18 provide that no *disbursement of appropriations* made for charitable, educational or benevolent purposes, shall be made to any denominational or sectarian institution." (Letter to secretary April 6, 1920.)

AMMENDMENT SUGGESTED BY THE REV. C. H. FORNEY, OF HARRISBURG:

"I believe with Mr. McSparran, that civil pensions are an injustice to the tax payer. I am also fully convinved that successful contradiction of the following five points can be challenged:

1. That the beneficiaries of these gratuities enter the service of the state, or municipalities, voluntarily and of free choice.

2. That the service they render, the labor they perform, the work they do is, as a rule, less, and not more, difficult, enervating, wearisome and exhausting, nor accompanied with greater danger to life and limb, than in other callings.

3. That a smaller percentage of these beneficiaries contract vocational diseases, making the evening of their lives less enjoyable and serviceable than those in many other vocations.

4. The remuneration which they receive is as large as, and in many instances larger than, citizens generally receive for similar work in other callings.

5. That the service which they render is not of a higher order nor greater efficiency because of the prospective pension." (Letter to the secretary, April 21, 1920.)

Section 19. APPROPRIATIONS FOR THE SUPPORT OF WIDOWS AND ORPHANS OF SOLDIERS.

AMENDMENT SUGGESTED BY THE LEGISLATIVE REFERENCE BUREAU:

"Section 19, Article III, which permits appropriations to institutions wherein widows of soldiers are supported or assisted or orphans of soldiers are maintained and educated, seems to be inconsistent with the budget provisions of section 15, which prohibits any appropriation to separate institutions. These appropriations would in their nature be charitable or benevolent appropriations. There are possibly two ways in which the inconsistency might be remedied: First, by inserting a saving clause into section 15, to the effect that the appropriation against separate appropriations to individual institutions would not be applicable to institutions supporting widows or orphans of soldiers: Secondly, by providing in this Section 19 that the appropriation should be made by the general assembly to institutions of this character as a class." (Letter to secretary, April 6, 1920.)

Section 22. INVESTMENT OF TRUST FUNDS.

AMENDMENT SUGGESTED BY H. K. SIEBENECK, OF PITTSBURGH AND THE CIVIC CLUB OF ALLEGHENY COUNTY:

"It is recommended that this section be not changed as proposed It is believed to be unwise to authorize the investment of trust funds in bonds of private companies. Plenty of public bonds will be available for the next twenty years."

Section 22-A. NEW.

AMENDMENTS SUGGESTED BY CORTEZ H. JENNINGS, OF TOWANDA, PENNA.:

"Under existing laws tanneries are allowed to dump any sort of refuse into the streams, the consequence of this is, that farmers living on streams below tanneries are obliged each year to treat their cattle to avoid anthrax poisoning, and this is not sufficient as riparian owners below tanneries lose more or less stock each year because of this poison * * * * * I can see no reason why tanneries should be exempt * * * * * If common reports are to be believed their profits are ample enough so that they could easily afford to steralize or purify the liquids coming from the tanneries and discharge into the streams. It is to be assumed that if these liquids contain matter poisonous to live stock and human beings it probably has a deleterious effect on the fish." (Letter to secretary, April 17, 1920.)

Section 25. LEGISLATION DURING SPECIAL SESSIONS.

AMENDMENT SUGGESTED BY THE HON. ALEX. SIMPSON, JR.:

"Would it not be well to allow the governor to submit to the legislature, when in special session, any other matter than that named in the call, if it is, in his judgment, of such importance as to call for its immediate consideration." (Letter to secretary, April 12, 1920.)

Very truly yours,

WM. DRAPER LEWIS,

Secretary.

MEMORANDA AND BRIEFS No. 42.

JUDGES—APPOINTIVE VS. ELECTIVE SYSTEM.

Harrisburg, Pa., May 11, 1920.

Hon. William I. Schaffer, Chairman.

Dear Sir: I understand you desire me to submit in the form of a brief the substance of an argument I prepared some time ago on an appointive system for judges of courts of record.

I comply with the suggestion with hesitation, because, while the brief is perhaps not devoid of information, it differs from all other briefs heretofore and hereafter submitted by me in being an argument in favor of the amendment suggested on page 54 of the May 11, 1920, calendar, which is as follows:

Section 27-B (New). (To be submitted separately to the electorate).

The governor shall nominate and by and with the advice of a majority of all the members of the senate appoint the judges of all courts of record. The adoption of this section shall be regarded as superseding all provisions in the constitution for the election of such judges.

My political past and my known present position on public questions is such that I can advocate the constitutional change which I now call to your attention without danger of being accused of doing so on account of a conscious or unconscious desire to keep things as they are, or because of any enthusiasm for extreme conservative positions on public questions. Indeed it is as a progressive and as one vitally interested in social legislation that I ask you to consider the advisability of giving to the electorate of the state the right to pass on the question whether they desire to substitute an appointive for an elective judiciary. The election of judges is, I believe, unsound theoretically, and practically it does not work as well as the appointive system.

I have an abiding faith in democracy. The cure for most of the evils under which we suffer is more, not less, democracy. There is no educational force in the community comparable with the ballot; no evil greater than any curtailment of the franchise. But all this does not mean that the people should elect all their servants. Members of the legislature and those executive officers who are charged with the duty of initiating or carrying out policies, should be selected by the electorate. But the very qualities which make the electorate the only body to ultimately decide public policy, unfits them for the very different task of selecting the trained expert to perform a definite designated service. We do not elect our doctors who man our health department, the engineers who lay our roads, or the forester who becomes our commissioner of forestry. And yet all these employments require no more highly trained specialists than the business of the judge. It seems to me to be axiomatic that wherever the duty to be performed is a ministerial duty, into which questions of policy do not enter, and which require for their efficient performance years of special preparation, then the public officer to perform that duty should be selected by some other process than that of election. While this statement is, I believe, of almost universal application, it is peculiarly applicable to the judiciary. We often hear the expression "judicial temperament." By this, I take it, we mean a temperament making it natural for the possessor to analyze a problem on all sides, to weigh different points of view and reach a conclusion only after careful consideration, free from prejudice. Such a temperament, while it by no means incapacitates a man from making a public expression of his carefully thought out opinion, usually does make him shun the stump and the election contest.

Had we no experience to guide us, it is fairly certain that, in the long run, the judicial business would be better done and as a consequence the people would have a greater confidence in the administration of justice in the state in which the judiciary were appointed, not elected. The business of the adminstration of justice is a highly specialized business, and the turmoil of an election is not the machinery for the selection of experts competent to handle it and from which we have reason to hope for the best results.

We are, however, fortunately not in a position of being obliged to depend on purely theoretical speculation. We are having to-day, in this country, practical demonstration of the comparative results of elective and appointive judicial systems. Our federal judiciary is appointive. There are states, like Massachusetts, that have never had any other than the appointive system. We have the material at our hand for a comparative study of results. My contention is that this study leads to no uncertain conclusion. If there is any place where it might be doubted whether an appointive judiciary system would in practice prove satisfactory, it would be the local federal judiciary. The great size of the United States makes it impossible that the president should know the local peculiarities and needs of each district, and also makes it impossible for him to make personal and thorough investigation of the fitness of his appointees, and yet there is hardly a member of the commission who would advocate the election of local federal judiciary. Not that presidents have not made grave errors in appointments: they have. But by and large we all know that the results are good. Take Massachusetts. Every lawyer on the commission has a considerable acquaintance at the bar among the people of that state. Again it is true that we have heard criticisms of particular appointees, but have we not all been impressed with the general and universal satisfaction which the appointive system gives in that state? The opinion that the appointive system works well is not confined to the members of the bar of Massachusetts. As far as I have been able to observe (and I have taken trouble to make inquiries because I have long been interested in this subject), the satisfaction with the appointive system in Massachusetts in general among all classes of people.

I need not call your attention to the fact that in a state like Pennsylvania, where we have had the elective system since the constitution of 1838, there is a very widespread belief that judges should be appointed. I do not say that this belief is a settled conviction on the part of the majority of the people, or even a majority of the members of the bar, but we have only to ask individual members of this commission to know that there at least exists a difference of opinion on this subject.

There is one argument against an appointive judiciary to which reference should be made. It is this: With us a judge passes on the constitutionality of acts of the legislature. The state constitution contains a bill of rights. Under the varying expressions in the bill of rights, it is the duty of the courts to declare unconstitutional any act which deprives a person of his liberty or property without due process of law. Practically this means that it is the duty of the judge to declare unconstitutional any act the provisions of which violate those fundamental principles of personal liberty and right to acquire, possess and enjoy property which are the heritage of English-speaking people. The practical application of these fundamental principles necessarily vary from time to time with shifting economic conditions. Thus it is that I have heard publicists argue that an appointive judiciary would be apt to be out of touch with social and economic conditions, prone to hold legislation designed to meet real and pressing social evils unconstitutional because of a

lack of understanding of living conditions. A plausible theroy is this, on its face, but it does not bear the test of actual experience.

Take the great social laws of our day that have run the gauntlet of the courts. It was the elected supreme court of Illinois that held an act regulating the hours of labor which applied only to women's labor unconstitutional, though subsequently that decision was reversed. It was the elected supreme court of Pennsylvania that held a law requiring wages to be paid in money—thereby prohibiting payment in store orders—unconstitutional as denying to the workman the right of free contract, and it was the appointed supreme court of the United States that upheld the constiutionality of such regulation.

It was the elected appellate court of New York which held the first workmen's compensation act of that state unconstitutional—a decision which shocked the nation and which was instantly reversed by a change in the state constitution. The appointed supreme court of the United States had no difficulty in sustaining workmen's compensation legislation.

Those who have been interested in social legislation in the past twenty years know that all advocates of such legislation have felt a confidence that the appointive federal supreme court and the appointed supreme court of Massachusetts were the two courts in the country most inclined to support the constitutionality of legislation of this character. There is a reason for this. The appointive judge is more apt to have knowledge of the law, both constitutional and ordinary law, than the elected judge. This greater knowledge is obtained by the man with the instinct of the student. It is the student's instinct which makes the specialist in any line of human endeavor. Instead, therefore, of an appointed judiciary being out of touch with life, on the average the appointed judge is more apt to have that touch with the broad essential facts of life underlying social movements which lead to the enactment of such far-reaching legislation as workmen's compensation laws or minmum wage laws.

I have said that I advocated an appointed judiciary because I am a progressive deeply interested in modern special legislation. I trust I have made plain the reason for this statement.

I do not advocate that you should place in the constitution a provision that there should be an appointive judiciary without appending thereto the further provision that the proposal should be separately submitted to the electorate. Whatever the form in which the commission's recommendation will be ultimately embodied—whether in the form of a series of amendments or of a completely new constitution—there are certain fundamental changes, and this is one of them, which should be submitted separately. For this there is a practical reason. Much as I am interested in the matter of the change of which I have spoken, I do not advocate that a change likely to involve so much discussion should be placed in the new constitution to be voted on as a necessary part of that constitution by all those who would have any of the many other good things which the commission will doubtless place in the new or revised constitution. A part from this practical consideration, which would lead any man to avoid, if possible, placing all the work of the commission or a subsequent constitutional convention on a single vote of the people

for or against, I submit that the electors have a right to pass separately on any fundamental and important change which can be separately submitted.

Very truly your,

WM. DRAPER LEWIS,

Secretary.

MEMORANDA AND BRIEFS No. 43.

AMENDMENT OF PRELIMINARY DRAFT—SUGGESTIONS OF LAW ASSOCIATION OF PHILADELPHIA.

Harrisburg, May 12, 1920.

Hon. Wm. I Schaffer,
Chairman.

Dear Sir: The Commission, by resolution adopted May 11, 1920, has directed me to submit to them the suggestions of the Law Association of Philadelphia in re Article V. I submit herewith the text of the suggestions referred to.

Very truly yours,

WM. DRAPER LEWIS,

Secretary.

APPENDIX.

Article V, as Amended and Redrafted by The Law Association of Philadelphia.

THE JUDICIARY

Section 1. (Section 1 as in preliminary draft changed by Committee.) The judicial power of this commonwealth shall be vested in a supremme court, in courts of common pleas, courts of oyer and terminer and general jail delivery, courts of quarter sessions of the peace, orphans' courts, and, until otherwise provided by law, in such other courts as now exist and in such other courts as the general assembly shall hereafter from time to time establish.

Section 2. (Section 2 as in preliminary draft amended by Committee.) The supreme court shall consist of seven judges, who shall be elected by the qualified electors of the state at large. They shall hold their offices for the term of twenty-one years, if they so long behave themselves well, but shall not again be eligible. The judge eldest in commission shall be chief justice.

Section 3. (Section 3 as in present constitution and preliminary draft.) The jurisdiction of the supreme court shall extend over the state, and the judges thereof shall, by virtue of their offices, be justices of oyer and terminer and general jail delivery in the several counties; they shall have orginal jurisdiction in cases of injunction where a corporation is a party defendant, of habeas corpus, of man-

damus to courts of inferior jurisdiction, and of quo warranto as to all officers of the commonwealth whose jurisdiction extends over the state, but shall not exercise any other original jurisdiction: they shall have appellate jurisdiction by appeal, certiorari or writ of error in all cases, as is now or may hereafter be provided by law.

Section 3-A (of Preliminary Draft) dropped by Committee.

Section 3-B (of Preliminary Draft) dropped by Committee.

Section 4, as reported by Commission (of Preliminary Draft) dropped by Committee.

Section 4. (Section 4 as in present constitution.) Until otherwise directed by law, the courts of common pleas shall continue as at present established, except as herein changed; not more than four counties shall, at any time, be included in one judicial district organized for said court.

Section 5. (Section 5 as in preliminary draft.) Whenever a county shall contain *fifty (forty)* thousand inhabitants it may constitute a separate judicial district, and when so constituted shall elect one judge learned in the law, and the general assembly shall provide for additional judges learned in the law, as the business of the said district may require. Counties containing a population less than is sufficient to constitute separate districts shall be formed into convenient single districts, or, if necessary, may be attached to contiguous districts, as the general assembly may provide. The office of associate judge, not learned in the law, is abolished, but the several associate judges in office when this constitution shall be adopted shall serve for their unexpired terms.

Section 6. (Section 6 as in preliminary draft, with slight amendment by Committee.) In the county of Philadelphia the jurisdiction and powers now vested in the several numbered courts of common pleas shall be vested in one court of common pleas, composed of all the judges in commission in said courts. Such jurisdiction and powers shall extend to all proceedings at law and in equity which shall have been instituted in the several numbered courts, and shall be subject to such changes as may be made by law, and subject to change of venue as provided by law. The judge oldest in commission shall be the president judge but any president judge re-elected shall continue to be the president judge.

The number of judges in said court may be by law increased or decreased from time to time.

In the county of Allegheny there shall also be but one court of common pleas composed of all the judges in commission in said courts with jurisdiction, organization and power as now established, subject to such changes as may be provided by law, and subject to change of venue as provided by law. The judge oldest in commission shall be the president judge but any president judge re-elected shall continue to be the president judge.

The number of judges in said court may be by law increased *or decreased* from time to time.

The said courts in the counties of Philadelphia and Allegheny, respectively, shall, from time to time, detail one or more of their judges to hold the courts of oyer and terminer *and general jail delivey*, and the courts of quarter sessions of the peace of said counties, in such manner as may be directed by law.

Section 7. (Section 7 as in preliminary draft.) For Philadelphia county there shall be one prothonotary's office, the prothonotary to be appointed by the judges of said court and to hold his office for three years, subject to removal by a majority of said judges; the said prothonotary shall appoint such assistants as may be necessary and authorized by said court: and he and his assistants shall receive fixed salaries to be determined by law and paid by said county; all fees collected in said office except such as may be due to the commonwealth shall be paid by the prothonotary into the county treasury.

(Section 8 of present constitution included in section 6 above, as in preliminary draft.)

Section 8. (Section 9 of present constitution as amended by Committee.) Judges of the courts of common pleas learned in the law shall be judges of the courts of oyer and terminer, and general jail delivery, quarter sessions of the peace, and of the orphans' court, except in such counties in which separate orphans' courts are or may be established, and within their respective districts shall be justices of the peace as to criminal matters.

Section 9. (Section 10 of present constitution, with slight amendment by Committee.) The judges of the courts of common pleas, within their respective counties, shall have power to issue writs of certiorari to all inferior courts not of record, and to cause their proceedings to be brought before them, and right and justice to be done.

Section 11, as reported by Commission (pp. 29 and 30 of Preliminary Draft) dropped by Committee.

Section 12, as reported by Commission (pp. 31 and 32 of Preliminary Draft) dropped by Committee.

Section 10. (As framed by Committee for abolition of magistrates' courts.) Magistrates' courts as now organized in Philadelphia shall be continued until the magistrates now in office shall have served out their respective terms, after which time the office of magistrate and magistrates' courts are hereby abolished.

(Section 13 of present constitution dropped, as in preliminary draft.)

Section 11. (Section 14 as in preliminary draft.) In all cases of summary conviction in this commonwealth or of judgment in suit for a penalty before a judicial officer or court not of record, either party may appeal to such court of record and on such terms as may be prescribed by law.

Section 12. (Section 15 as in present constitution.) All judges required to be learned in the law, except the judges of the supreme court, shall be elected by the qualified electors of the respective districts over which they are to preside, and shall hold their offices for the period of ten years, if they shall so long behave themselves well; but for any reasonable cause, which shall not be sufficient ground for impeachment, the governor may remove any of them on the address of two-thirds of each house of the general assembly.

(Section 16 of present constitution dropped, as in preliminary draft.)

Section 13. (Section 17 of present constitution, as amended by committee.) Should any two or more judges of the supreme court, or any two or more judges of the court of common pleas *or of the*

orphans' court for the same district be elected at the same time, they shall, as soon after the election as convenient, cast lots for priority of commission, and certify the result to the governor, who shall issue their commissions in accordance therewith.

Section 14. (Section 18 of present constitution without amendments suggested by Commission in preliminary draft.) The judges of the supreme court, and the judges of the several courts of common pleas, and all other judges required to be learned in the law, shall at stated times receive for their services an adequate compensation, which shall be fixed by law and paid by the state.

Section 15. (Section 19 of present constitution as amended by committee.) The judges of the supreme court and all other judges during their continuance in office shall reside within this commonwealth and within the districts for which they shall be respectively elected.

Section 16. (Section 20 as in present constitution.) The several courts of common pleas, besides the powers herein conferred, shall have and exercise within their respective districts, subject to such changes as may be made by law, such chancery powers as are now vested by law in the several courts of common pleas of this commonwealth, or as may hereafter be conferred upon them by law.

Section 17. (Section 21 as in preliminary draft as amended by Committee.) No duties shall be imposed upon *any court* or any judge thereof except such as are judicial. The general assembly shall enact such legislation as is necessary to transfer the appointing power now vested in courts or judges, and after such transfer no court or judge shall exercise any power of appointment except as herein provided.

Section 18. (Section 22 as in preliminary draft.) In every county wherein the population shall exceed one hundred and fifty thousand the general assembly shall, and in any other county may, establish a separate orphans' court to consist of one or more judges who shall be learned in the law, which court shall exercise all the jurisdiction and power vested in or which may hereafter be conferred upon the orphans' court, and thereupon the jurisdiction of the judges of the court of common pleas within such county in orphans' court proceedings shall cease and determine. In any county in which a separate orphans' court shall be established the register of wills shall be clerk of such court and subject to its directions in all matters pertaining to his office; he may appoint assistant clerks, but only with the consent and approval of said court. All accounts filed with him as register or as clerk of the said orphans' court shall be audited by the court without expense to parties, except where all parties interested in a pending proceeding shall nominate an auditor whom the court may, in its discretion, appoint. In every county orphans' courts shall possess all the powers and jurisdiction of a register's court, and separate registers' courts are hereby abolished.

Section 19. (Section 23 as in preliminary draft and present constitution.) The style of all process shall be "The Commonwealth of Pennsylvania." All prosecutions shall be carried on in the name and by the authority of the commonwealth of Pennsylvania, and conclude "against the peace and dignity of the same."

Section 20. (Section 24 as in present constitution.) In all cases of felonious homicide, and in such other criminal cases as may be provided by law, the accused after conviction and sentence may remove the indictment, record and all proceedings to the supreme court for review.

Section 21. (Section 25 as in preliminary draft, amended by commitee.) Any vacancy happening by death, resignation or otherwise, in any court of record, shall be filled by appointment by the governor, to continue till the first Monday of January next succeeding the first election, as provided for such office, which shall occur sixty or more days after the happening of such vacancy.

Section 22. (Section 26 as in present constitution and preliminary draft.) All laws relating to courts shall be general and of uniform operation, and the organization, jurisdiction and powers of all courts of the same class or grade, so far as regulated by law, and the force and effect of the process and judgments of such courts, shall be uniform; and the general assembly is hereby prohibited from creating other courts to exercise the powers vested by this Constitution in the judges of the courts of common pleas and orphans' courts.

Section 23. (Section 27 as in present constitution and perliminary draft.) The parties, by agreement filed, may in civil case dispense with trial by jury, and submit the decision of such case to the court having jurisdiction thereof, and such court shall hear and determine the same; and the judgment thereon shall be subject to writ of error as in other cases.

Section 24. (Section 27-A, as in preliminary draft, amended by Committee.) The general assembly may provide that the costs of litigation may be classified or graded according to the amount in controversy.

N. B. As an addition to the foreging draft of *Article V,* a minority of the Committee deem it advisable to insert after *section 10* the following additional section relating to justices of the peace and other courts of inferior jurisdiction:

"Until otherwise provided by law, justices of the peace or aldermen shall be elected in the several wards, districts, boroughs and townships by the electors thereof in such manner as is now or may hereafter be directed by law, and shall be commissioned by the governor for the term of five years, or such longer term as the general assembly may by law prescribe.

"The general assembly shall hereafter provide for the division of the several counties of the commonwealth into convenient districts for the better adminstration of justice by justice of the peace, or other courts of inferior jurisdicion, and prescribe suitable rules for their organization and the regulation of their jurisdiction. Justices of the peace and all other judicial officers of inferior jurisdiction shall be paid by salary only for all services rendered by them in their judicial capacity, which shall be in lieu of all other compensation, and shall be fixed by law and paid by the proper county. All fees, fines and penalties in any such court shall be paid into the respective county treasuries for the use of the county."

MEMORANDA AND BRIEFS No. 44.

AMENDMENTS ON CALENDAR OF MAY 11, 1920.
ARTICLE V.

REASONS IN SUPPORT SUBMITTED BY PROPONENTS.

Harrisburg, May 11, 1920.

Hon. Wm. I. Schaffer, Chairman.

Dear Sir: I submit herewith extracts from letters received by the secretary in support of amendments to Article V of the preliminary draft, the text of the amendments being set forth on the calendar for May 11th, 1920, on pages 32-55.

The following are not, however, included here because covered by formal briefs:

(a) Argument in support of amendments suggested by Owen J. Roberts and James Collins Jones, Esqs., of Philadelphia. See Brief No. 39.

(b) Argument in support of Section 27-B, relating to the appointment of judges by the governor. See Brief No. 42.

(c) Argument in support of amendments suggested by R. P. Shick, Esq., on behalf of the Constitutional Club. This brief in on file with the secretary.

ARTICLE V.

THE JUDICIARY.

Section 1. JUDICAL POWER. (Calendar of May 11th, Page 32.)

AMENDMENT SUGGESTED BY THE HON. ALEX. SIMPSON, JR., PHILADELPHIA:

"I would suggest a provision for one more superior courts, as the legislature shall prescribe. It is quite probable that before many years it will be desirable to have one in the eastern and one in the western end of the state."

(Letter to Secretary, April 12, 1920.)

Section 2. SUPREME COURT.

AMENDMENT SUGGESTED BY HON. ROBERT VON MOSCHZISKER, HON. RUSSEL C. STEWART AND HON. ALEX. SIMPSON, JR.:

"I do not approve of increasing the justices of the supreme court to nine, for I think it unnecessary. In addition, I think a court of seven can do better judicial work in consultation than one of nine." (Letter from Mr. Justice Von Mochzisker to the secretary dated March 10th, 1920.)

"I do not think that the number of the judges of the supreme court should be increased. It seems to me the present number is the better number, and I have not heard any complaint either that the judges of the supreme court were overworked or that they would do better work if the number was increased. I know no reason for any change in number." (Letter from Judge Stewart to the secretary dated March 30, 1920.)

"It is not necessary at least at the present time, to have nine judges in the supreme court." (Letter from Mr. Justice Simpson to the secretary dated April 12th, 1920.)

AMENDMENT SUGGESTED BY HON. ALEX. SIMPSON, JR.:

Omitting the last sentence of section 2, and providing a substitute for Section 17.

Article V. Section 17, "does not provide for president judges in the orphans' court. I would suggest in lieu thereof and of the last clause in secion 2 of Article V, and the next to last sentence of the first paragraph of section 4 of Article V, the following: The justice or judge oldest in continuous service shall be the chief justice or president judge of each court; he shall preside over the deliberations of the court, but neither he nor any other judge shall have or exercise any other powers or privileges except in common with all the other members of the court. If two or more justices or judges, not then members of a court, are elected or appointed at the same time, they shall draw lots for priority of commission and shall certify the result to the governor, who shall issue their commissions accordingly."

"A further benefit from the section as thus suggested, is that it would do away with the scandal now pertaining to the municipal court of this city, where the president judge makes all the appointments without any necessity for consulting with his colleagues. You will notice also that it provides that the judge oldest in continuous service shall be the presiding judge. This varies from the present practice in that if a judge has been appointed and has served for some time before a second appointment is made, the first named judge shall have the prior right without drawing lots. A number of instances have arisen in which lots had to be drawn despite the fact that one judge had been in continuous service for a year or more before the other was appointed or elected. It was so when the present chief justice and judge Mestrezat were elected. Then the chief justice had been serving for about fifteen months before Judge Mestrezat came into the court." (Letter to secretary, April 12th, 1920.)

AMENDMENT SUGGESTED BY THE HON. R. H. KOCH, POTTSVILLE, PA.:

"Two justices may be elected in November and commissioned in December, but they would not act until after their induction into office on the first Monday of the following January. I think in such case, the justice oldest in years, or the one who received the largest vote at the election, should in turn become

the chief justice. And the same rule should apply to the president judgeship of the superior court, of the court of common pleas and of the orphans' court. Of course, where two or more are elected at any time, the governor might date the commission of one before that of the other. But the question should be settled in the constitution itself."

AMENDMENT SUGGESTED BY LEGISLATIVE REFERENCE BUREAU:

"The last part of this clause might lead to confusion. Under it the possibility might arise where a judge, appointed to fill a vacancy, would be on the bench at the time when the chief justice retires and would hold the commission which would expire before that of any other justice, in which case this clause would provide that he would become chief justice, a proposition, of course, not intended by the clause. It is recommended that the words 'And thereafter any justice whose commission shall first expire shall in turn be chief justice', be stricken from the section." (Letter to the secretary, April 6th 1920.)

Section 3. JURISDICTION OF SUPREME COURT.

AMENDMENT SUGGESTED BY THE HON. ALEX. SIMPSON, JR.:

"This power has long existed in many of the states, and has met with approval everywhere except perhaps in North Carolina, as will appear by the Report of the Penna. Bar Association for 1908, pages 60 to 80.

"In our own state the wisdom of allowing the supreme court to adopt uniform equity rules has been made very apparent, and the same reason exists why it should be so in other cases. The legislature would be saved much annoyance, changes could be readily made, and the best kind of uniformity secured. In the past the cases in which titles to real estate have been held invalid because the court rules did not fully accord with the acts of assembly, have not been infrequent, to the great loss of purchasers at judicial sales." (Letter to the Secretary, April 12th, 1920.)

Section 3-A. SUPERIOR COURT.

AMENDMENT SUGGESTED BY CIVIC CLUB OF ALLEGHENY COUNTY:

"It is submitted that difficulty is likely to be found in persuading the right kind of men to go on the bench for sixteen years only, without hope of re-election."

AMENDMENT SUGGESTED BY THE HON. R. C. STEWART, EASTON, PA.:

"I think that it would be a mistake to declare that the judges of the superior court shall not be eligable for re-election, unless the term is made twenty-one years. Under the provision proposed some of the best judges of the present superior court would be out of office. I would like an increase in the term from ten to twenty-one years." (Letter to the Secretary, March 30, 1920.)

AMENDMENT SUGGESTED BY LEGISLATIVE REFERENCE BUREAU:

"To fix this term at sixteen years and make them ineligible for re-election seems to be objectionable, for the reason that many pearsons are elected to the superior court when at the age of from thirty-five to forty-five years. These justices would retire when from fifty to sixty years of age. At this age they would be at the height of their careers as justices and to retire then would be to take from the state the value of their services, and also place the judge in the position in many cases of coming back anew to the practice of law. The term as fixed seems unfair both to the state and to the judge. We would suggest that the present statute law upon this subject be retained or this term be lengthen by the commission to coincide with that of the supreme court." (Letter to the secretary, April 6, 1920.)

AMENDMENT SUGGESTED BY THE HON. R. H. KOCH, POTTSVILLE, PA.:

See above under Section 2.

AMENDMENT SUGGESTED BY THE HON. ALEX. SIMPSON, JR.:

"If this suggestion to Article V, section 1, is adopted I would suggest also that Article V, section 3-A be changed so as to state 'the superior court or courts shall each consist of *not less than* seven judges.'" (Letter to secretary, April 12, 1920.)

Section 3-F NEW.

AMENDMENT SUGGESTED BY THE HON. ROBERT VON MOSCHZISKER:

"It seems to me it might be well to give the supreme court power, when necessity arises, to have a common pleas judge sent in to any particular district, to hold any court that he could hold in his own district. If there is no one able in the district to call in another judge. As the law stands now, while a judge can call another man into his district, in a single judge district, if the judge dies, up to the time of a new appointment. there is no way of having the business of the district taken care of, and several years ago this caused considerable inconvenience in a certain part of the state." (Letter to the secretary, April 26, 1920.)

Section 4. COMMON PLEAS COURTS.

AMENDMENT SUGGESTED BY THE CIVIC CLUB OF ALLEGHENY COUNTY:

"This provision does not appear with reference to the supreme court, the superior court, or the orphans' court judges. It would seem best to omit it and make all judges stand on the same footing."

AMENDMENT SUGGESTED BY THE HON. R. H. KOCH, POTTSVILLE, PA.:

See under Section 2 above.

AMENDMENT SUGGESTED BY J. P. McNARNEY, OF EMPORIUM, PA.:

"The proposed change would make each county a judicial district. * * * * * *

There can be no valid objection to the proposal unless it is the expense, but that is small. It will add only eleven law judges and will dispose of about forty associate judges so that the real increase in expense will be negligible." (See amendment to section 5 infra).

"Of course the judge would not be busy all the time but he can be employed in other counties and avoid the necessity of creating additional judges for those counties, and, as you are probably aware, it is almost a necessity at times for outside judges to be called for the trial of cases that the resident judges can not consistently try." (Letter to the commission, April 22, 1920).

Section 5. JUDICIAL DISTRICTS.—ASSOCIATE JUDGES.

AMENDMENT SUGGESTED BY J. P. McNARNEY, OF EMPORIUM, PA.:

See above under section 4.

Section 6. COURTS OF COMMON PLEAS OF PHILADELPHIA AND ALLEGHENY COUNTRIES.

AMENDMENT SUGGESTED BY THE HON. ALEX. SIMPSON, JR.:

"This article is a complicated one and special. It allows the judges of the Philadelphia courts to be decreased in number but does not allow this as to the Allegheny county courts. It seems to me the section ought to cover all common pleas courts now or hereafter formed, so that neither Luzerne, nor Lackawanna, nor Lancaster, nor any other county could have more than one common pleas court." (Letter to the secretary, April 12, 1920.)

AMENDMENT SUGGESTED BY THE HON. R. C. STEWART, EASTON, PA.:

"In view of the trouble which arose in Commonwealth vs. Johnson, 236 Pa. St. 412, would it not be well to strike out 'their' in above or make some other change in the words to meet the situation in above case." (Letter to the secretary, March 30, 1921).

AMENDMENT SUGGESTED BY CIVIC CLUB OF ALLEGHENY COUNTY:

"The decision passing on the constitutionality of the Allegheny county court has left some doubt as to whether or not the legislature can erect one system of jurisprudence for Allegheny and Philadelphia counties and another system for the residue of the state. It would seem as though the uniformity clause, Article V, section 26, did not intend this diversity to exist, except in so far as specified in the particular language of the constitution."

Section 11. JUSTICES OF THE PEACE—ALDERMEN.

AMENDMENT SUGGESTED BY LEGISLATIVE REFERENCE BUREAU:

"Under the language of the section it would seem that there could be but one justice of the peace in each city whose population would be less than one hundred thousand. Evidently it is the intention of the framers that in cities having a population of more than fifty thousand, one justice of the peace shall be elected for each fifty thousand or fractional part thereof." (Letter to the secretary, April 6, 1920.)

AMENDMENT SUGGESTED BY WILLIAM D. FORSYTH, COUNSEL TRAFFIC ADJUSTMENT CO., PITTSBURGH, PA.:

"I have found very great injustice in many instances resulting from the fact that justices of the peace have not been learned in the law. I believe that the provision already in the proposed constitution should be extended to all districts where there is more than one person learned in the law, and not confined to cities alone." (Letter to secretary, April 2, 1920.)

AMENDMENT SUGGESTED BY CIVIC CLUB OF ALLEGHENY COUNTY:

"It is provided that where a district contains a city, even although it may also contain boroughs, the justice must be a resident of the city. This seems unnecessary. The people of the district can take care of the situation."

AMENDMENT SUGGESTED BY THE HON. H. R. KOCH:

"If there is to be only one justice of the peace for every 50,000 people, I think the language above quoted should be changed. * * * For, if justices of the peace are to have and exercise the same powers under the revised constitution as they now exercise, one justice of the peace for every 50,000 people will be a great inconvenience, to those people and will be insufficient for the work they will have for him to do."

Section 16-A NEW.

AMENDMENT SUGGESTED BY HON. H. G. WASSON, OF PITTSBURGH, PA.:

"A provision of this character would be in the interest of the people * * * and would enable them to keep a faithful servant, or on the other hand to get rid of a misfit on the bench. I think it would be a very desirable addition to the judiciary article of our form of government." (Letter to the secretary, March 30, 1920.)

Section 17. PRIORITY OF COMMISSION.

AMENDMENT SUGGESTED BY THE HON. ALEX. SIMPSON, JR.:

See under section 2 above.

Section 18. COMPENSATION OF JUDGES.

AMENDMENT SUGGESTED BY G. W. WILLIAMS, PITTSBURGH, PA.:

"It does not seem to me that there is any good reason for providing that the salary or emoluments of a judge may be increased during his term of office. The settled policy of the commonwealth has always been otherwise." (Letter to the secretary, March 30, 1920.)

Section 21. DUTIES OF JUDGES, ETC.

AMENDMENT SUGGESTED BY THE CIVIC CLUB OF ALLEGHENY COUNTY:

"It is recommended that this section be re-drafted so as to retain the power of the courts to appoint receivers, trustees, and court officers at least; and to define just what 'judicial duties' are."

AMENDMENT SUGGESTED BY J. PERCY KEATING, ESQ., OF PHILADELPHIA:

"There are cases, such for instance as that of the Philadelphia Savings Fund Society, where under the general terms of the act of May 25, 1874, P. L. 228, substituting the act of March 15, 1824, P. L. 49, the president judge of the common pleas courts appoint managers to fill vacancies from a list provided by the board of managers. If the proposed section 21 is adopted it might well be that the general assembly in place of transferring the appointing power might desire to revoke it altogether and relegate the board to its original power of filling vacancies as provided by its charter of Feb. 25, 1819, P. L. 79." (Letter to secretary, April 21, 1920.)

Section 22. ORPHANS COURT.

AMENDMENT SUGGESTED BY HON. R. C. STEWART, EASTON, PA.:

"I note that in section 5, providing for a separate judicial district you change the word 'shall' to 'may.' It seems to me that the same change should be made in above section. We shall probably have a separate orphans' court in this county next year, and in my judgment, it is utterly unnecessary. We now have, as I am informed, although I have not examined it myself, legislation that permits orphans' court judges to sit in the trial of both civil and criminal cases, but I am informed that there are very few orphans' court judges in the state that are willing to assist the other judges, and I am also informed that in most of the districts outside of Philadelphia and Allegheny, there is very little work for the orphans' court judges. We could use, in this county, another judge in the civil and criminal courts, but I am certain that there is no necessity for a separate orphans court judge." (Letter to the secretary, March 30, 1920.)

AMENDMENT SUGGESTED BY H. K. SIEBENECK, OF PITTSBURGH, PA.:

"Provision is made for the terms of the supreme court and superior court and the common pleas judges. In the section relating to the orphans' court judges, however, there is no provision as to the length of their term. This was covered by old section 15, which has been dropped. Section 4 refers to common pleas judges, who in smaller counties act as orphans' court judges. Their term is fixed at ten years. This would seem to be an oversight and the language used in section 4 should be incorporated in section 22 relative to the orphans' court."

Section 27-A. NEW.

AMENDMENT SUGGESTED BY CIVIC CLUB OF ALLEGHENY COUNTY AND BY THE HON. R. H. KOCH:

"Among other reasons, it will cause too much petty litigation." (Civic Club of Allegheny County.)

"In more than forty years of contact with the administration of the law, I have never known of a case that called for such legislation. A widow might have an indefeasible title to a small piece of ground and if some scamp of a squatter were to pitch his tent on it and the widow were driven to a case of ejectment to oust him, the squatter, under the claim of poverty, could make the county pay for hiring a lawyer to carry through all the courts, of the commonwealth an unwarranted litigation until perhaps the widow, the real owner of the property, would become completely exhausted in a vain effort to compete with the county treasury to maintain her rights. I have never yet known of a person with a good claim who could not, upon a contingent fee, hire all the lawyers he wanted. In a criminal case, I have never any trouble to find some lawyer to defend a man too poor to hire counsel, and, in a civil case I have never known poverty to deprive any litigant either of the aid of counsel or any of his rights. Such legislation as this section warrants would result in untold mischief and great expense to the taxpayers. It requires little imagination to conceive how reckless and dishonest clients with shyster lawyers may raid every county treasury in the state." (Letter from the Hon. R. H. Koch.)

Yours very truly,

WILLIAM DRAPER LEWIS,

Secretary.

MEMORANDA AND BRIEFS No. 45.

AMENDMENTS ON CALENDAR OF MAY 11, 1920.

ARTICLES VI, VIII, IX, X, XVI, XVII, XVIII, XVIII-A.

REASONS IN SUPPORT SUBMITTED BY PROPONENTS.

Harrisburg, Pa., May 12, 1920.

Hon. Wm. I. Schaffer, Chairman,

Dear Sir: I submit herewith extracts from letters and telegrams received in support of amendments to articles VI, VIII, IX, X, XVI, XVII, XVIII, XVIII-A, of the preliminary draft, the text of the amendments being set forth on the calendar for May 11, 1920 on pages 55-124.

In addition to the above formal briefs submitted by the following are on file in the office of the secretary:

(a) S. B. McCormick, revision of Article X. (Printed and distributed among the members of the commission.)

(b) Ralph J. Baker, of Harrisburg, revision of Article XVI, section 7.

(c) George D. Taylor, of Scranton, for a periodic constitutional convention. (Printed and distributed among the members of the commission.)

(d) T. F. Chrostwaite, representing State Association of Boroughs, relating to municipalities and boroughs.

ARTICLE VI.

IMPEACHMENT AND REMOVAL FROM OFFICE.

(Calendar of May 11, 1920.)

Section 4. TENURE OF OFFICE.—REMOVALS FROM OFFICE.

AMENDMENT SUGGESTED BY THE HON. ROBERT J. MOSCHZISKER:

"I see no reason why there should not be a similar provision as to judges, giving the supreme court or the chief justice thereof or the governor, power to remove judges of the lower courts." (Letter to the secretary, March 10, 1920.)

AMENDMENT SUGGESTED BY THE CIVIC CLUB OF ALLEGHENY COUNTY:

"The provision that all officers except the governor, lieutenant governor, legislators and judges shall be removed by the governor after hearing, on address of two-thirds of the senate, seems to be a dead letter. It is suggested that impeachment is in the nature of a criminal proceeding; that it is very difficult to convict with a two-thirds vote requisite;

that it is almost impractical to have the legislature act both as a law-making body and a judicial and prosecuting body during its short biennial session; and that therefore the removal-from-office clause should be so broadened as to include all officers except the governor, lieutenant governor and legislators; that this removal should be for reasonable cause, after due notice, and hearing, on the address of two-thirds of the senate."

ARTICLE VIII.

SUFFRAGE AND ELECTIONS.

(Calendar for May 11, 1920.)

Section 1. QUALIFICATIONS OF ELECTORS.

AMENDMENT SUGGESTED BY THE HON. R. H. KOCH, OF POTTSVILLE, PA.:

"Since the word 'male' is to be stricken out of the first section I think the word 'he' occurring at the beginning of the numbered paragraphs 1, 2 and 3, should be stricken out, because 'he' is also a male. Instead of 'he' I would suggest the words 'such citizen,' so as to put beyond question the right of women to vote."

AMENDMENT SUGGESTED BY CHARLES H. OGDEN, PITTSBURGH, PA.:

"My observation is that the business and professional man, who has the most at stake, is the most indifferent in regard to his franchise. * * * The people who are indifferent in regard to registering and voting should be compelled to do so or be penalized in some way if it is possible. When a citizen regards his franchise so lightly, he is certainly a very poor citizen. We need compulsory voting if for no other reason than to keep in touch with our citizens." (Letter to the secretary, April 1, 1920).

Section 4. METHOD OF CONDUCTING ELECTIONS.—SECRECY.

AMENDMENT SUGGESTED BY THE CIVIC CLUB OF ALLEGHENY COUNTY:

"Secrecy in voting does not exist so long as an elector, through fear or hope, can take with him into the voting booth an assistant to mark his ballot for him. While this recommendation may increase the difficulties of the illiterate voters, it does not make it impossible for him as he can copy from a marked sample ballot."

AMENDMENT SUGGESTED BY H. K. SIEBENECK, PITTSBURGH, PA.:

"Under the system existing in Allegheny county the primary election is the really important election in very many cases. Personal registration was adopted as a means of preventing 'colonization,' because of the fact that the length of time requisite to keep a 'floater' in a doutful district (extending from the last registration day to the election day, a period of generally two months) was so expensive as to be impractical on a large scale. But as the law now stands the last registration day may come three days before the primary and the very purpose of personal registration is thus nullified and the same evil which existed arises again."

Section 14. ELECTION OFFICERS.

AMENDMENT SUGGESTED BY LEGISLATIVE REFERENCE BUREAU:

"Without discussing the merits of the insertion of a provision permitting election boards to be appointed in such manner as might be provided by law, it is important that this section be amended so as to provide for the election of election officers biennially at municipal elections. This is the practice which now prevails. The retention of the word annually in this section was evidently overlooked by the commission." (Letter to the secretary, April 6, 1920.)

Section 16. OVERSEERS OF ELECTIONS.

AMENDMENT SUGGESTED BY THE CIVIC CLUB OF ALLEGHENY COUNTY, AND H. K. SIEBENECK, PITTSBURGH, PA.:

"The result of an election for a whole city may turn upon frauds committed in one election district of the city, and there is no sufficient reason why the electors of the rest of the city should not have standing to ask that overseers be appointed for the doubtful district. Furthermore, fraud may be so strongly intrenched in a district that no overseers therein are available. The courts should have authority to appoint nonresidents of the district on the petition of any four citizens." (Letter from Civic Club of Allegheny County.)

"Trouble arises in the congested districts where out of 200 or 300 voters there is often not one properly qualified to act as an overseer." (Letter from Mr. Siebeneck.)

ARTICLE IX.

TAXATION AND FINANCE.

(Calendar for May 11, 1920.)

Section 1. TAXES TO BE UNIFORM.

AMENDMENT SUGGESTED BY CHARLES B. LITTLE, SCRANTON, PA.:

"To meet a criticism made * * * * to the effect that this amendment might be construed to cover injuries hereto-

fore arising, I would suggest that the word 'hereafter' be inserted." (Letter to the secretary, April 8, 1920.)

AMENDMENT SUGGESTED BY D. W. NEVIN, EASTON, PA.:

"In answer to the above, I think assessments should be uniform, and rate fixed in accordance with need of authority levying the tax." (Letter to the secretary, March 11, 1920.)

AMENDMENT SUGGESTED BY H. K. SIEBENECK, PITTSBURGH, PA.:

"Our courts have held that this clause is violated by a direct inheritance tax law which allows a $250.00 exemption. The section as it exists in the draft is not in conformity with modern thought on the subject. Insurance taxation should be coupled with inheritance taxation, because insurance is, in economic effect an inheritance, although in legal effect it is not."

Section 1-A. NEW.

AMENDMENT SUGGESTED BY HON. C. STUART PATTERSON:

"Inheritance taxes are, in effect, taxes upon capital, and a diminution pro tanto of the fund available for, and seeking, investments. The proceeds of inheritance taxes, therefore, should be exclusively devoted to capital purposes, such as a sinking fund for the extinguishment of the state debt, or the construction of state highways, or public buildings, etc. Any other application of those proceeds would be economically unsound. If the tax yields a sum in excess of the need of the State for capital expenditure, the remedy is not the diversion of the proceeds to ordinary income purposes, but rather a reduction in the rate of inheritance taxation." (Letter to the secretary, April 16, 1920.)

Section 2. EXEMPTION FROM TAXATION LIMITED.

AMENDMENT SUGGESTED BY CIVIC CLUB OF ALLEGHENY COUNTY:

"If this be not done, then the limitation proposed by the commission is approved."

AMENDMENT SUGGESTED BY THE CHAIRMAN:

"The purpose of this amendment is, at its test denotes, to empower the general assembly to exempt persons and property from taxation. This would enable the legislature to pass a law taxing incomes over a certain amount, which at present cannot be constitutionality done."

Section 6. STATE CREDIT NOT TO BE PLEDGED.

AMENDMENT SUGGESTED BY THE HON. ALEX. SIMPSON, JR.:

"This section can be consolidated with section 21, of the article relating to municipalities, so as to read: 'Section 6. Neither the credit of the commonwealth or that of any municipality shall be pledged or loaned to any individual, company, corporation or association, nor shall the commonwealth

or any municipality become the agent of or stockholder in any company, association or corporation; but a lease by a municipality for a public service facility,' etc., etc., as in section 21." (Letter to the secretary, April 12, 1920.)

Section 11. STATE SINKING FUND.

AMENDMENT SUGGESTED BY H. K. SIEBENECK, PITTSBURGH, PA.:

"The provision for the fixed amount of $250,000.00 per annum as a sinking fund does not seem proper. A sinking fund should be a given percentage of the outstanding debt, say 2% or 3%."

Section 15-A. PLACE OF PAYING TAXES.

AMENDMENT SUGGESTED BY MARK H. CRAIG, PITTSBURGH, PA.:

"The ideal arrangement would be to have one office in each county in which taxpayers might pay all their taxes, and also from which office they could obtain a certificate (by paying a small fee) which would be conclusive on the municipal authorities levying the tax, which would show all taxes due on the particular property. This arrangement would certainly be more economical and I do not see why it would place any hardship on the taxpayer to require him to come to the county seat once a year to pay his taxes.

The plan as proposed would make it necessary for the county authorities to send their duplicates out to all of the boroughs, which would make considerable labor and expense in counties where there might be, say forty or more boroughs. In my plan, on the contrary the boroughs, townships and school districts would have to send their duplicate in to the one central office, and would have the benefit of the common organization and machinery and offices for the collection." (Letter to the secretary, March 17, 1920.)

AMENDMENT SUGGESTED BY THE LEGISLATIVE REFERENCE BUREAU:

"The effect of the general law in boroughs is to provide that all taxes shall be collected by one tax collector. In many boroughs this system does not prevail because special laws to the contrary are in force. In many cities all the taxes are collected by the city treasurer, and in some instances the county commissioners appoint some person other than the city treasurer to collect the county taxes within the city, and in some instances, in third class cities county tax collectors are appointed in each ward. The provision as drafted would require all these taxes in cities and boroughs to be collected by one collector. There seems no logical reason why townships should be omitted from this section. In townships there are usually collected township taxes, school taxes and poor taxes." (Letter to the secretary, April 6, 1920.)

ARTICLE XVI.

PRIVATE CORPORATIONS.

(Calendar of May 11, 1920.)

Section 7. STOCKS AND BONDS—INCREASE OF INDEBTEDNESS.

AMENDMENT SUGGESTED BY FREDERIC L. CLARK, ESQ., PHILADELPHIA, PA.:

"With the present practice of having different classes of stock, each with its own peculiar rights and privileges, and especially with stock of no par value, the words 'the larger amount in value' appear to be entirely inappropriate. It would be difficult, if not impossible, to ascertain accurately the meaning of these words if there were several classes of stock with different values. There are par values, book values, market values and other values. And if the constitution attempts to prescribe in detail the measure of consent required from each class for the increase of any class of stock or of debt I fear great confusion will arise. The rights of the holders of preferred stock generally are set forth in the certificates * * * *." (Letter to the secretary, April 8, 1920.)

"Some advantage would be gained by expressly providing that the provision requiring thirty days' notice may be waived by all the stockholders. This is the present practice, but so far as we know the upper courts have not yet passed on the legality of this practice. Although millions of dollars worth of stock have been so issued." (Letter from Mr. Fitzgerald, Scranton, Pa.)

AMENDMENT SUGGESTED BY HON. ALEX. SIMPSON, JR., PHILA., PA.:

"Some provision ought to be inserted for corporations issuing shares of stock having no par value. If this is not done numbers of such corporations will be formed and stock or bonds, or both will be issued for no real value whatever." (Letter to the secretary, April 12, 1920.)

AMENDMENT SUGGESTED BY THE CIVIC CLUB OF ALLEGHENY COUNTY:

"Section 7 of the draft, as read in connection with the old constitution leads to the inevitable conclusion that hereafter, if this draft be adopted, a corporation might issue a fictitious issue of bonds and that the same would be valid. The word 'indebtedness' seems to have been omitted from this redraft when referring to a fictitious increase."

Section 9. BANKING LAWS.

AMENDMENT SUGGESTED BY HON. ALEX. SIMPSON, JR., PHILA.:

Section 9-11. These two sections may be well consolidated by placing section 11 at the beginning of section 9." (Letter to the secretary, April 12, 1920.)

ARTICLE XVII.

CORPORATIONS FOR PUBLIC SERVICE.

(Calendar for May 11, 1920.)

Section 1-A.

AMENDMENT SUGGESTED BY F. P. SCHOONMAKER, BRADFORD, PA.:

"The municipality in its operation and control of public utility ought not to be hampered by any such commission as the Public Service Commission. This commission has now more than it can properly attend to, and I believe that eventually, even public service corporations will be better regulated both for the interest of the corporation and the people served, if local commissions are created to pass upon the local service furnished by such corporations." (Letter to the secretary, April 10, 1920.)

Section 5. LIMITATION OF POWERS.

AMENDMENT SUGGESTED BY HON. FRANCIS SHUNK BROWN, PHILA.:

"The difficulty is that possibly it is not desirable to open the door too wide. As suggested, this would authorize the Pennsylvania Railroad to go into the electric light business in Philadelphia,—provided a law were passed to that effect. The clause might, be narrowed so as to read that any street railway using electricity as a motive power, etc., but it may eventually be desirable to have railroads, if they are electrified throughout the whole of their length, also furnish current to farmers, etc., and the extent to which this might be done could be left to the legislature." (Letter to the secretary, April 24, 1920.)

ARTICLE XVIII.

FUTURE AMENDMENTS.

(Calendar of May 11, 1920.)

Section 1-A. NEW.

AMENDMENT SUGGESTED BY HON. ALEXANDER SIMPSON, JR., PHILA.:

"I have long been of opinion that some provision should appear in the constitution authorizing the people at stated

periods to determine whether or not they desire to amend their constitution. Interests which in the course of time have obtained undue rights under existing constitutions always oppose new constitutions; but if the people were given an opportunity, say every thirty years, to decide whether or not they will have a new constitution, it would make our government more democratic, and it seems to me would be beneficial in every respect." (Letter to the secretary, April 12, 1920.)

ARTICLE XVIII-A.

MUNICIPALITIES.

(Calendar of May 11, 1920.)

Section 1-A. NEW.

AMENDMENT SUGGESTED BY F. P. SCHOONMAKER, BRADFORD, PA.:

"Personally I am very much in favor of granting general power to cities and boroughs for their local affairs and I think the suggestion contained on page 135 of Memoranda and Brief No. 21 * * * * * could very properly be adopted by this commission. I believe it is very hampering to the proper solution of municipal problems daily arising, to be confined to laws of precisely enumerated powers." (Letter to the secretary, April 10, 1920.)

Section 2-A.

AMENDMENT SUGGESTED BY W. CLYDE GRUBB, PITTSBURGH, PA.:

"The decisions of our courts and the decisions of the courts of other states are very vague as to just what a government duty is. The city of Philadelphia and the city of Pittsburgh were each held to be liable for a falling wire used by the police and fire department, respectively. The city is probably exempt from injuries sustained by the fire department in responding to a fire. If the wire by which the alarm is sounded is not a government agency, why make the engine by which the fire is extinguished such an agency? A constitutional provision covering this feature would, in some instances, work a hardship on the municipality. This risk, however, could be carried by casualty companies. I understand that many of the counties and municipalities insure their automobiles and elevators." (Letter to the secretary, April 1, 1920.)

Section 3. NEW COUNTIES.

AMENDMENT SUGGESTED BY THE CIVIC CLUB OF ALLEGHENY COUNTY AND H. K. SIEBENECK:

"It may be desirable to make a new county, for example, embracing the city of Pittsburgh and contiguous thickly popu-

lated territory and work out the metropolitan needs through the county government. Population, rather than area, should be the determining pre-requisite. The location of the county line with respect to the county seat seems unimportant." (Letter from the Civic Club of Allegheny County.)

"It may well happen that the county of Allegheny could be properly divided so as to create one small metropolitan county and leave the bulk of the farm lands in the county outside of it, to be attached either to the adjoining counties or form a separate county by itself. * * * * The inhabitants of some of our boroughs cling fondly to their form of government and resist to the last man any attempt to abolish it by consolidation. Their position has a great deal of merit in it for their local bodies supply the needs of the community as they arise, whereas, if engulfed in a metropolitan municipality, they would be overlooked by reason of their smallness. The federative principle in the municipal scheme of things is bound to prevail sooner or later and in my judgment can most easily be evolved by broadening the functions of the county commissioners. Anything that tends to hamper that development is harmful."

Section 4. CITIES AND BOROUGHS.—CREATION AND CHANGE OF BOUNDARIES.

AMENDMENT SUGGESTED BY G. W. WILLIAMS, PITTSBURGH, PA.:

"It seems to me that this section, enacting as it does, that no city or borough shall be created on the boundaries thereof be changed except with the consent of 'a majority of such electors resident within the proposed added area,' is an exceedingly bad provision. This section as now drawn puts it in the power of any borough which lies outside of the present corporate limits of a large city (and which, through increase of population or other causes has virtually become an integral part of such city) to prevent such incorporation. It is in substance an attempt to recognize municipalities as distinct entities, whereas in fact they are nothing but sub-divisions of the State for purposes of convenience." (Letter to the secretary, March 30, 1920.)

AMENDMENT SUGGESTED BY ANDREW WRIGHT CRAWFORD, ESQ., PHILA.:

"This omits the requirement that there must be a majority in favor of the change in *each* area. To require this might create pockets, as in Montreal."

AMENDMENT SUGGESTED BY PITTSBURGH REAL ESTATE BOARD AND OTHERS:

"Nothing perhaps can be better done than to eliminate article four under discussion as it seems to us that any present way of creating and changing boundaries, together with the ability, right and privilege of the legislature to adjust and provide from time to time for such things as are now open

and possible preserves the rights of all in a fair manner and at the same time does not stand in the way of progress or adjusting changes in boundaries as must probably come up from time to time in developing and progressing communities while a provision in the constitution such as said section would generally hamper and impede; especially by binding the hands of the legislature so that problems of the kind otherwise solvable would be beyond a solution." (Telegram to the secretary, April 12, 1920.)

"The Allentown chamber of commerce authorizes vigorous protest against any change in constitution that will make it impossible for third class cities to annex or consolidate with adjoining communities. We favor simplifying rather than complicating matters." (Telegram to the commission, April 13, 1920.)

"Bethlehem chamber of commerce protests strenuously against section four new article on municipalities as operating against the growth of municipalities (Telegram to the commission, April 13, 1920.)

"Pottsville chamber of commerce representing the business and civic interests of this city and vicinity desires to protest against section four of new article on municipalities in proposed change to state constitution which makes it practically impossible for consolidation of any third class cities." (Telegram to the commission, April 13, 1920.)

"Greater Wilkes-Barre chamber of commerce would urge section four of article on municipalities in proposed change of state constitution be eliminated entirely. Adoption of such specifications in our judgment would be a step backwards as it would be physically impossible to carry out such provision." (Telegram to the commission, April 14, 1920.)

"Carbondale chamber of commerce * * * * * desires to register a protest against proposed constitutional change which would prohibit third class cities from extending territorially." (Telegram to the commission, April 14, 1920.)

"The city of Allentown protests against change of Section Four of constitution which interferes with annexations of cities. Do not add additional troubles to our complex municipal machinery." (Telegram from Mayor to the commission, April 13, 1920.)

Section 4-B. NEW.

AMENDMENT SUGGESTED BY THE COUNCIL OF THE CITY OF MEADVILLE, PA.:

"With the passage of a law by the legislature of the commonwealth of Pennsylvania creating a public service commission for the commonwealth and with the various judicial decisions which have been rendered in connection with the provisions of this act, it has become evident that many of the conditions hitherto attached in good faith to these franchise grants apparently have become of little force and effect insofar as they continue to be operative and binding upon the public service corporations; * * * * *

Now, therefore, be it resolved, by the council of the city of Meadville, a city of the third class of the commonwealth of Pennsylvania, That it is their opinion that the principle of home rule for municipalities should be extended rather than diminished * * *."

Resolution of the council of Meadville sent to the secretary.

Section 4-D. NEW.

AMENDMENT SUGGESTED BY THE PITTSBURGH CHAMBER OF COMMERCE:

"The problem of home rule is a very pressing and important one in our cities. On the one hand, we do not believe that the state of Pennsylvania should be deprived of its soverign power in the matter of controlling constitution, organizing and reorganizing the municipal corporations in the state. On the other hand, great wrong has from time to time been inflicted upon cities by legislation fixing salaries of employes, fixing the number of employes, fixing the hours of labor of employes determining pensions to be paid, and fixing innumerable details of administrative practice. This legislation has not only kept the cities constantly embroiled in state politics, but has resulted in crippling the administration of cities in certain respects and loading the taxpayers with unnecessary burdens. Surely in these matters the council of the city is the body best able to determine how the city should conduct its business.

The above suggested amendment preserves the sovereign powers of the state to constitute municipal corporations and at the same time protects the cities from ill-considered and oppressive legislation in matters of purely administrative detail.

The second paragraph of the above proposed amendments has to do with municipal powers.

On the one hand, we believe that the sovereignty of the state should be preserved here as elsewhere. On the other hand, many very important municipal needs are now neglected on account of the rules laid down by our courts that the powers of the city will be strictly construed. The English rule is much broader, and that is one reason why English municipalities function in a more satisfactory manner. Our suggestion is an approximation to the English rule." (Letter to the secretary, April 17, 1920.)

Section 6. SPECIAL COMMISSIONS PROHIBITED.

AMENDMENT SUGGESTED BY H. K. SIEBENECK, PITTSBURGH, PA.:

"This will save the Sinking Fund Commission of Pittsburgh."

AMENDMENT SUGGESTED BY ANDREW WRIGHT CRAWFORD, SECRETARY, AMERICAN CIVIC ASSOCIATION, PHILADELPHIA, PA.:

"The section as now worded is not clear."

Section 7. ELECTION—APPOINTMENT OF COUNTY OFFICERS.

AMENDMENT SUGGESTED BY G. W. WILLIAMS, PITTSBURGH, PA.:

"From the heading, it is to be presumed that said section relates solely to county officers. Inasmuch, however, as section 1 of the said new article on municipalities expressly says that 'municipalities of this commonwealth are counties, townships, cities, boroughs,' etc., I respectfully submit that the term 'municipal' in said section 7 should be stricken out, and the word 'county' substituted therefor so as not to leave ground for any possible contention that the officers of a city or borough can be appointed. While such a construction would in all probability never obtain, yet it would seem to be better to leave no possible ground therefor, considering that the result of such construction would be to virtually overturn our whole system of government." (Letter to the secretary, March 30, 1920.)

AMENDMENT SUGGESTED BY CHAMBER OF COMMERCE OF PITTSBURGH:

"The treasurer is a purely administrative officer. There is no reason why this election should be required by the constitution. The controller, or, in some counties, the auditors have the duty of auditing and passing upon the expenditures of the county commissioner. They should not be appointed by the commissioners, but should have the independence which comes from an election by the people." (Letter to the secretary, April 17, 1920.)

AMENDMENT SUGGESTED BY NATIONAL MUNICIPAL LEAGUE AND H. ROBERT MAYS, OF READING, PA.:

"The effect of this provision if inserted in the constitution will permit the legislature greatly to reduce the county ballot. In this we heartily concur, but wish to call your attention to the fact that there is no good reason why any county offices should be named in the constitution. The treasurer is purely a custodial officer, who need not be elected or mentioned in the constitution and whose functions should be performed by a bank, although there is much to be said for electing the controller who should have general supervision and control over the fiscal policies of the county. However, full power over both offices can well be left to the legislature. Future development in county government will look towards a more perfect co-ordination of power and centralization of responsibility. In order that the people of the state during the next generation may be free to modify the form of county government as the needs dictate, we urge that the office of county commissioner and sheriff also be not perpetuated in the constitution." (Letter from H. W. Dodds, Secretary, National Municipal League.)

"I can find no reason, at least not a good one, for attempting to deny the voters of any district the right to choose and elect their own county officers. This, I think, particularly applies to the selection of a county controller and a district attorney.

The section above referred to provides that commissioners, sheriffs and treasurers shall be elected. The fact that this is mentioned, to my mind, is a sufficient justification for asking the commission to adopt a section providing that all county officials shall be elected.

I have sufficient confidence in the good judgment of the ordinary voter to intrust to him the selection of the various officers who shall conduct the affairs of the county, and am opposed to a system which would, in a sense, place into the power of one man, or a set of men, the naming of all the officials of a county." (Letter from H. Robert Mays, April 21, 1920.)

Section 8. RESIDENCES OF COUNTY OFFICERS.

AMENDMENT SUGGESTED BY NATIONAL MUNICIPAL LEAGUE:

"The effect will be to permit county officials to go outside the county in search of administrative officers while retaining the provision that all elected officials shall be residents of the county.

The principle is that in case of administrative officers knowledge and experience are desirable and obviously these requirements can be more easily fulfilled if the range of choice is not narrowly restricted to geographical territory. We anticipate that the future development of county government will be to confine elected officials to those who determine policies and secure purely administrative officers by appointment. Accordingly the provisions that the former shall be residents of the territory for which they act is not desirable." (Letter to the commission, April 19, 1920.)

Section 11. COMPENSATION OF COUNTY OFFICERS.

AMENDMENT SUGGESTED BY HON. ALEX. SIMPSON, JR.:

"I would suggest in order to broaden this provision, to insert after the word 'fees' 'or other compensation." (Letter to the secretary, April 12, 1920.)

AMENDMENT SUGGESTED BY THOS. H. GREER, OF BUTLER, PA.:

"As it is generally understood the prothonotary and also the clerk of the orphans' court, are officers of the court and not county officers in the general understanding, and it is a hard matter to accurately define the standing of the recorder of deeds and the register of wills. If the new section is intended to include the officers spoken of might it not be well to so specify and not leave the matter open for construction?" (Letter to the secretary, March 6, 1920.)

Section 13. COUNTY OFFICERS.

AMENDMENT SUGGESTED BY HON. ALEX. SIMPSON, JR.:

"If the provision heretofore suggested authorizing the courts to appoint their prothonotary and clerks is adopted, those words ought to be eliminated from this section." (Letter to the secretary, April 12, 1920.)

AMENDMENT SUGGESTED BY NATIONAL MUNICIPAL LEAGUE:

"The purpose of our provisions is simply to place the organization of county government on the same plane as that of present city government by freeing it from hard and fixed forms, which may prove burdensome in after years. It is a permissive section purely. Every reason for keeping the form of city and borough government out of the constitution applies with equal force to county government. The development of country life and the rapid increase in the number of mixed counties containing both industrial and rural communities is giving more and more attention to county government. As at present organized the county falls far short of the standards set for other divisions of government. It is a headless organization which the public finds impossible of intelligent observation or control. The people are bewildered by the maze of elected officers and the confusion of official duties. Here sinister political motives find their final refuge. In the opinion of the average citizen, county government has broken down." (Letter from H. W. Dodd, Secretary, National Municipal League.)

AMENDMENT SUGGESTED BY R. H. KOCH:

"I think the office of coroner could be abolished. I cannot recall a single prosecution resulting directly from a coroner's inquest in Schuylkill county, whereas thousands of dollars are spent every year in conducting inquests. It seems to me that whenever suspicious circumstances attach to the death of any person the district attorney could be authorized to have proper investigation made. Such investigation would bring to him the facts necessary to be brought out in the prosecution and trial."

Section 17. CONSTRUCTION OF PASSENGER RAILWAY IN CITIES, ETC.

AMENDMENT SUGGESTED BY F. B. SCHOONMAKER, CITY SOLICITOR, BRADFORD, PA.:

"The power and freedom of contract between the municipality and the local corporation should not be hampered." (Letter to the secretary, April 10, 1920.)

Section 18. ASSESSMENT OF BENEFITS FOR PUBLIC IMPROVEMENTS.

AMENDMENT SUGGESTED BY S. R. ROSENGARTEN, PHILADELPHIA:

"Unless some such provision as the foregoing is made, then what usually happens in the case of benefit assessments seems to be as follows:

"Suppose you own a property assessed for purposes of ordinary taxation at $10,000. Let us say that the street on which it is located is subsequently made a prominent thoroughfare by being joined with another street at a point perhaps six blocks distant from your property, or perhaps a main sewer is constructed half a mile away from your property, or other public improvement made at a distance from your property so that

your property is assessed, say $1,000 as its share of the cost of the improvement. Thereupon you pay the thousand dollars to the municipality and assume that your troubles are over. But to the contrary, it usually turns out that the assessors of real estate for purposes of ordinary taxation immediately increase the assessed value of your property for purposes of ordinary taxation, claiming that your property is more valuable than before, and the fact that you have already paid the equivalent in cash has no application to them in making their assessments." (Letter to the secretary, March 29, 1920.)

AMENDMENT SUGGESTED BY F. B. SCHOONMAKER, CITY SOLICITOR, BRADFORD, PA.:

"The Law Committee of the League of Third Class Cities recommends the elimination of the listing of the improvements which will bring about a liability for assessment and also the elimination of the word 'particular' as bringing into the matter of local assessments a new word that has not been defined by our courts.

"We also suggest that authority be granted for re-assessments after a reasonable period of years, of property on the theory that it will be benefited both by the original improvement and by the reconstruction of it when it is worn out." (Letter to the secretary, April 10, 1920.)

AMENDMENT SUGGESTED BY ANDREW WRIGHT, CRAWFORD:

"The phrase 'special assessments' is used throughout the country and has become the technical name for such measures."

AMENDMENT SUGGESTED BY THE HON. ALEX. SIMPSON, JR.:

"Heretofore property not abutting was not held liable for municipal improvements, and for public buildings, &c, no assessment could be made, and I can see a possibility of great wrong being done if it is now permitted. Its tendency is to heavier taxation instead of an economic use of public funds. When the public buildings in this city were erected, all the properties within a wide radius were benefited in some degree, but it would have been a great injustice to have assessed any property therefor. The purpose of erecting the building was to have a general public improvement and not to benefit any particular property or neighborhood. I do not think it wise to go beyond the present law in regard to this matter." (Letter to the secretary, April 12, 1920.)

Section 19. EXTENT OF LAND PERMITTED TO BE TAKEN FOR PUBLIC IMPROVEMENT.

AMENDMENT SUGGESTED BY JOHN HILDER, SECRETARY PHILA. HOUSING ASSOCIATION:

"This is a logical expansion of powers already granted. It is a power exercised by other civilized governments. It is a power essential to:

(a) The reclaiming of spoilt areas in the older parts of the cities, including areas where land has been overcrowded, where streets are narrow or dead end, where blocks are intersected by courts and alleys, giving the only access to rear dwellings. Private initiative cannot possibly deal with this situation.

(b) The proper development of unimproved areas which, because of natural conditions cannot be properly improved, through piece-meal or private development. For example, a large part of the 40th ward in Philadelphia is spoiled for all time and will be a constant source of expense and a constant detriment to the city because improvements were built there upon low and marshy ground, which could have been drained and made wholesome had the city been empowered to take it over, drain it, and then resell."

Section 19-A. NEW.

AMENDMENT SUGGESTED BY ANDREW WRIGHT CRAWFORD, SECRETARY AMERICAN CIVIC ASSOCIATION:

"This is suggested in order that Pennsylvania cities may be clearly within their state constitutional rights in putting zoning regulations among their city planning ordinances. Such regulations have already been enacted in New York, St. Louis and upwards of a half-dozen other cities. Some seven or eight cities have such regulations drafted and as many more are preparing such regulations."

Section 19-B. NEW.

AMENDMENT SUGGESTED BY ANDREW WRIGHT CRAWFORD, SECRETARY AMERICAN CIVIC ASSOCIATION:

"WHEREAS, billboard advertising is of no public benefit, is a scandalous waste of money and is an artistic disgrace to the public highways, whether of city, suburb or the county. * * *

AND WHEREAS, investment of millions of dollars by the city of Philadelphia in a Roosevelt boulevard and the Southern boulevard, has been for the time rendered nugatory so far as the beauty of the boulevards are concerned, by the erection of enormous numbers of billboards along the route; the billboard and advertising interests seeming to think that the object of Philadelphia was to create a beautiful thing for them to utterly ruin."

Extracts from resolution adopted at mass meeting in Philadelphia, March 24, 1920, asking for a city ordinance and legislation forbidding the erection of billboards in residential and undeveloped sections and imposing restrictions in other cases.

"The advertising interests of Pennsylvania do not wish to see regulations about outdoor advertising written into the state constitution, and are prepared to oppose such a proposition every inch of the way if necessary. They appreciate that the control of the isolated boards that offend is a difficult problem, but think that the existing laws can reach most cases if only enforced. The trouble is that many laws now on the statute books are not enforced. There are many other objects of commercial utility besides outdoor advertising structures that do not measure up to the aesthetic standard, but few of them are subject to attack and desire for regulation and restriction for some reason or other. But I hope the matter can be satisfactorily adjusted, as the industry is quite a factor in the eco-

nomic distribution problem of this country and should not be subject to ruthless attacks." (Letter from Tom Nokes, representing Ad-Press Club, Johnstown, Pa.)

Section 21. MUNICIPALITIES NOT TO BECOME STOCKHOLDERS IN CORPORATIONS, ETC., NOR LOAN CREDIT.

AMENDMENT SUGGESTED BY A. B. SPERRY, PITTSBURGH, PA.:

"A change designed to render inoperative any plan that might slip back onto the shoulders of taxpayers a burden of which they thought themselves relieved." (Letter to the secretary, March 31, 1920.)

AMENDMENT SUGGESTED BY JOHN HILDER, SECRETARY PHILA. HOUSING ASSOCIATION:

See under section 19 above.

Section 22. DEBTS OF MUNICIPALITIES.

AMENDMENT SUGGESTED BY H. K. SIEBENECK, PITTSBURGH, PA.:

"Coupled with the provision for incorporated districts in Section 5 of this Article the following municipalities then, may exist in any given area, viz: county, city, school district, and *one or more* incorporated districts. There should, therefore, be a limit to the total amount of indebtedness that may be incurred by all this area."

AMENDMENT SUGGESTED BY MAURICE R. SCHARFF, PITTSBURGH, PA.:

"Under the present constitution, the net indebtedness that may be incurred by counties, townships, cities or boroughs, and school districts is 7 per cent, and if municipalities of all three classes, exercising concurrent jurisdiction in a given area, incur the limit of indebtedness, the maximum total would be 21 per cent.

"Under the preliminary draft, the limit for each of these classes of municipalities is 10 per cent, or a combined total of 30 per cent, and in addition, incorporated districts 'to facilitate public works for the benefit of two or more municipalities' are permitted, each of which might be given equal power to incur indebtedness by the general assembly.

"It is thus conceivable that a sewer district, a flood prevention district, a water district, a park district, and other similar districts might be incorporated, all including a given area, and that if each municipality were allowed the constitutional limit of indebtedness, a maximum limit of 50 or 100 per cent., or even more, would be possible."

AMENDMENT SUGGESTED BY LEGISLATIVE REFERENCE BUREAU:

"It is not clear from the section whether the deductions permitted are to be exclusive or whether they are to be in addition to certain deductions which are permitted under our

present law. Among such deductions might be mentioned bonds and cash held in the sinking fund, cash in the treasury of the municipality available for the sinking fund and revenues to be collected within the year for payment into the sinking fund. If it is the intention to retain deductions of this character, it might be well to enumerate them in the section. If an enumeration is attempted there is danger that the courts might take the position that since an enumeration was made it is presumed to be complete, and therefore they must refuse to permit deductions of the character mentioned in ascertaining the borrowing capacity of a municipality." (Letter to the secretary, April 6, 1920.)

AMENDMENT SUGGESTED BY WILLIAM S. TWINING, DIRECTOR DEPT. OF CITY TRANSIT, PHILADELPHIA:

"Unless a clause similar to the above is added to the section, a great deal of the expected benefit from sections 18 and 19 will be lost. Suppose for instance a city wishes to construct a boulevard through the heart of a city. Bonds must be filed for land taken, and contracts made. The total cost may be $25,000,000. To enable the city to proceed, practically this entire cost would have to be added to the debt even though seventy-five per cent. would be repaid out of assessments of special benefits under section 18 and resale of excess land under section 19. If the city had at the time an additional borrowing capacity of only $10,000,000 it would be impossible to go on with the improvement even though the city had more borrowing capacity than the net cost of the improvement."

AMENDMENT SUGGESTED BY A. B. SPERRY, PITTSBURGH, PA.:

"The suggested addition to section 22 on this same page of the preliminary draft is designed to make sure that taxpayers shall know the extent of the burden they are asked to vote upon themselves in indebtedness election * * * * The electors should also be given such information in the election notice as would enable them to properly consider the wisdom of voting for an indebtedness that might outlive that for which it paid.

"It is to protect both the municipalities that do not seek to deduct utility indebtedness in their statements of debt and the investors who may prefer the obligations of municipalities that make no such deductions that the suggested new clause (d) to follow clause (c) * * * is suggested. That it will be antagonized by representatives of those municipalities which make such deductions may be taken as evidence of the probable value of the proposition both to investors and to the municipalities of the commonwealth as a whole aside from the few large ones.

"The following new clause (e) is designed to correct an injustice of long standing by which the municipal taxpayers of the state are compelled to add to the burden of taxes imposed by their municipal bonds a further amount to cover the Pennsylvania state or personal property tax of 4 mills. If, as seems to have been settled, the United States cannot impose

its income taxes on the bonds of the states of the union or their municipalities, then the state of Pennsylvania cannot properly—perhaps not legally—impose taxes on its municipalities or their bonds. For the state of Pennsylvania to impose taxes on the bonds of Pennsylvania municipalities is so unreasonable that payment is said not to be enforced in the face of persistent refusals by municipalities to pay the tax. It would, of course, be wrong to allow municipalities to loan the tax-exemption powers they should have where they are directly forbidden to loan their credit. To leave municipal public utility bonds subject to state tax would emphasize the very proper distinction between such bonds and 'straight' tax-secured municipal bonds." (Letter to the secretary, March 31, 1920.)

Section 23. SINKING FUND.—SERIAL BOND PREMIUMS.

AMENDMENT SUGGESTED BY LEGISLATIVE REFERENCE BUREAU:

"Section 23 of this article permits the issue of obligations for a period of fifty years. This is an increase of twenty years over the period allowed in the present constitution. In many public improvements a fifty year bond should be permitted to be issued, but in many cases bonds for that period would far exceed the life of the improvement. This would be specially true in such cases as street paving." (Letter to the secretary, April 6, 1920.)

AMENDMENT SUGGESTED BY ANDREW WRIGHT CRAWFORD, SECRETARY, AMERICAN CIVIC ASSOCIATION:

"This suggestion is made because parks appreciate in value while all other public improvements except streets depreciate. The costs of streets should be met, generally, by special assessments."

AMENDMENT SUGGESTED BY A. B. SPERRY, PITTSBURGH, PA.:

"The provisions of section 23 as to sinking funds and serial bond provisions seem hopelessly ill-advised. The idea that lies under it is the same as was responsible for the very bad law which compels the city of Pittsburgh to divide each of its bond issues into thirty equal parts and pay one of those parts each year. This results in bonds of $100 and $500 denomination which sell at disgracefully low prices in competition with small-denomination U. S. liberty and victory bonds, themselves selling very low because of the enormous over-supply of small-denomination bonds. The times of payment as well as the interest rates and other details are absolutely for the discretion of the municipal authorities. The way this section 23 of the draft is worked would cause the officials of a municipality to think there was no alternative to bonds maturing every year, with no accumulation of sinking funds for longer than one year, except to make the bonds all come due at one time, involving the accumulation of a growing sinking fund throughout the whole period covered by the life of the bonds.

* * * * Unless entirely omitted it seems to the writer then section 23 should be limited to the entirely new paragraph enclosed." (Letter to the secretary, March 31, 1920.)

Yours very truly,

WM. DRAPER LEWIS,

Secretary.

MEMORANDA AND BRIEFS NO. 46.

EDUCATION—SUFFICIENCY OF FACILITIES PROVIDED IN THIS STATE—ENFORCEMENT OF COMPULSORY EDUCATION LAWS.

Harrisburg, Pa., May 12, 1920.

Hon. Wm. I. Schaffer, Chairman,

Dear Sir: The commission, by resolution of April 21, 1920, requested the superintendent of public instruction for information and advice upon the following questions:

> First. Are the facilities provided for the education of the children resident in any part of this commonwealth insufficient to give proper education to all such children desiring and entitled by law to receive the same? If so, where does such insufficiency exist and what official agency is responsible for such default?
>
> Second. Are the provisions of law providing for compulsory education of children in this commonwealth neglected, ignored or violated in any part thereof? If so, where does such default occur and what official agency is responsible therefor?

The reply from Dr. Thos. E. Finegan, Superintendent of Public Instruction, is appended hereto.

Yours truly truly,

WM. DRAPER LEWIS,
Secretary.

Harrisburg, Pa., May 10, 1920.

Doctor William Draper Lewis, Secretary,
Commission on Constitutional Amendment and Revision,
Harrisburg, Pa.

Dear Sir: Your communication of April 21, 1920, inclosing a copy of the following resolution adopted by the Commission on Constitutional Amendment and Revision was duly received:

"Resolved, that the superintendent of public instruction be respectfully requested, for the information of this commission and to assist it in the performance of its duties, to advise it upon the following questions:

First: Are the facilities for the education of the children resident in any part of this commonwealth insufficient to give proper education to all such children desiring and entitled by law to receive the same? If so, where does such insufficiency exist, and what official agency is responsible for such default?

Second. Are the provisions of law providing for compulsory education of children in this commonwealth neglected, ignored or violated in any part thereof? If so, where does such default occurs, and what official agency is responsible therefor?"

The constitution of this state provides as follows:

"The general assembly shall provide for the maintenance and support of a thorough and efficient system of public schools, wherein all the children of this commonwealth above the age of six years may be educated, and shall appropriate at least one million dollars each year for that purpose." (Article X, section 1.)

The language employed in this constitutional provisions must be interpreted to mean that each boy and girl in the state, irrespective of the section in which he and she may live, shall be accorded, so far as possible, equal educational opportunities.

Pursuant to such constitutional mandate, the general assembly has enacted laws providing for the maintenance and operation of a state system of public schools. Public Laws 309, approved May 18, 1911, and acts amendatory thereto are the laws which now regulate the maintenance and operation of such system of schools. Under the provisions of these laws it is obligatory upon each school district to maintain a term of school for at least 28 weeks or 140 days. In five-eighths of the school districts of the state school is maintained for this minimum period only. It is the practice however, in school districts which include the cities and in certain other districts, to maintain school for 40 weeks or 200 days. Boards of directors in school districts of the fourth class possessed, until the current year, the legal authority to excuse children from the operations of the compulsory attendance law for thirty per cent. of the time school is in session. The right of such excuses is now limited to children who have attained the age of twelve years. The directors of many districts have exercised this authority and in such districts the period of time which children have attended school is only 20 weeks or 100 days. The period of instruction which children receive, therefore, ranging from 100 days in certain districts to twice that amount or 200 days in other districts and not exceeding 140 days in five-eighths of the districts of the state, results not only in great inequality of school privileges but in weakening the efficiency of the state system as a whole.

In the following table the qualifications of the teachers employed in the schools of Pennsylvania are compared with those of the teachers employed in Massachusetts and in New Jersey:

	NUMBER.			PER CENT.		
	Mass.	N. J.	Pa.	Mass.	N. J.	Pa.
College graduates,	3,240	2,615	4,789	17%	15.5%	10.5%
Normal graduates,	13,369	11,496	20,375	69%	67 %	44 %
High school,	2,560	3,002	16,319	13%	17.5%	35.5%
Elementary education,	184	--------	4,500	1%	--------	10 %
	19,353	17,113	45,974	100%	100%	100%

From this table it appears that the percentage of teachers employed in the schools of Pennsylvania who have received either college or normal school training is considerably less than the percentage of teachers employed in either Massachusetts or in New Jersey who have received such training. It also appears that the percentage of teachers possessing the limited training of a high school education with no professional training who are employed in the schools of this state is more than twice the percentage of teachers having such qualifications who are employed in either Massachusetts or New Jersey. It further appears that 4500 or 10 per cent of the teachers employed in the schools of Pennsylvania have received no education beyond that which they received in the elementary school, while not a single teachers of these meager qualifications is employed in New Jersey and only 184 are employed in Massachusetts.

There are 197 local superintendents in this state who are authorized to issue teachers certificates. These superintendents are not governed by any state standard or uniform system and there are therefore 197 different standards of qualifications upon which teachers are certified. Such a system of certifying teachers must inevitably result in the maintenance of a low standard of qualifications. The effectiveness of the instruction given in the schools depends in a large measure upon the qualifications of the teachers giving such instruction.

It appears, from the above analysis of the qualifications of teachers, that the children in the different districts of the state receive their instruction from teachers whose qualifications vary all the way from a simple elementary school education to a professional education obtained in state normal schools or colleges.

The whole general equipment of a school affects vitally the efficiency of the work of such school. Such equipment is generally dependent upon the financial ability of the district to supply it. In some districts, therefore, buildings have been erected which contain modern improvements and up-to-date equipment. In such districts provision is made for the proper development and care of the health of all children, for the undernourished and tubercular children, and for the backward and physically handicapped children. In other districts of less financial ability all children are often crowded into improperly heated and ventilated buildings, and without other adequate accommodations.

The following table will illustrate the above statements,

School District.	Value assessed at	Assessed valuation.	Tax.	Pupils between 6 and 16.	Cost per pupil.	Valuation of property.
Lower Merion, Montgomery Co.,	1/3	$89,927,000	$278,576	4,119	$67 70	$19,645
Coal Town's, Northumberland Co.,	7/10	12,724,641	210,993	4,791	44 40	5,822
Newport, Luzerne Co.,	3/4	27,895,038	174,861	3,033	57 60	9,197
Lansford, Carbon Co.,	1/2	22,000,000	49,534	2,322	21 30	9,479
Blooming Grove, Pike Co.,	1/3	409,509	1,443	74	19 50	5,534
Palmyra, Pike Co.,	3/4	160,404	1,871	70	26 70	2,291
Shrewsbury, Sullivan Co.,	8/10	242,225	1,046	70	14 90	3,460
Fox, Sullivan Co.,	2/3	460,098	1,498	156	9 60	2,995
Miller, Perry Co.,	9/10	106,630	1,007	101	10 00	1,066
Casselman Boro., Somerset Co.,	6/10	42,920	779	80	9 70	5,365

From the short period of time which school is maintained in many districts of the state, from the limited training and qualifications which many of the teachers possess, from the inadequate accommodations provided through many school buildings and their equipment, and from the financial inability of many districts to provide sufficient funds for school purposes there exists great inequality of educational opportunity in many districts of the state and a failure to provide therein the efficient instruction which the children are entitled to receive.

The compulsory education law is not generally enforced throughout the rural regions of the state and it is not properly enforced in many of the cities of the state. The burden of enforcing this law has been placed solely upon local school boards. The law authorizes the payment of $2 per day to attendance officers and suitable attendance officers can not be employed at this compensation. Members of school boards fail to enforce the law in many instances because of the ill-feeling which their action in enforcing the statute would produce in the community in which they live. I am informed that in many sections of the state justices of the peace have shown sympathy with parents who violated the law and that convictions for such violations have been difficult.

It should be stated that a bureau has been established in the state department of public instruction for the proper enforcement of the compulsory education law, and boards of directors have been given notice that the law must be enforced and that for the failure to enforce it in any district of the state the public moneys of such district will be withheld.

Very respectfully yours,

THOS. E. FINEGAN,

State Superintendent of Public Instruction.

MEMORANDA AND BRIEFS NO. 47.

INITIATIVE AND REFERENDUM—TYPES OF CONSTITUTIONAL PROVISIONS..

Harrisburg, Pa., May 12, 1920.

Mr. John A. Voll, Commissioner,

Dear Sir: I understand you desire memoranda on the different types of initiative and referendum constitutional provisions that have been adopted in state constitutions.

There are, generally speaking, three types of initiative and referendum provisions in the constitutions of the twenty-two states in which the referendum is a part of the governmental machinery, and the nineteen states in which the people have reserved the initiative power.

The first type of provision merely reserves to the people the power either to initiate or refer laws or both, leaving it to the legislature to enact enabling legislation. A typical provision is that contained in the Utah constitution, as follows:

> "The legal voters or such fractional part thereof of the state of Utah, as may be provided by law, under such conditions and in such manner and within such time as may be provided by law, may initiate any desired legislation and cause the same to be submitted to a vote of the people for approval or rejection, or may require any law passed by the legislature (except those laws passed by a two-thirds vote of the members elected to each house of the legislature) to be submitted to the voters of the state before such law shall take effect."

The difficulty with a provision of this sort is that it tends to defeat the very purpose of the initiative and referendum. The theory of these reserved powers is that they shall counteract any tendency on the part of the members of the legislature either to neglect properly to carry out the wishes of their constituents or to act contrary to the desire of the electorate. The initiative is intended to cure misrepresentative omissions; the referendum to cure misrepresentative acts. Both powers are calculated to make our state governments really representative. Whatever may be the practical result of the exercise of these powers, the foregoing statement is unquestionably the theory upon which their reservation is predicated.

It is, therefore, obvious that to place upon the legislature the entire responsibility of adopting legislation for the carrying into effect of the reserved powers, renders it possible for the legislature by declining to enact enabling legislation, to nullify the constitutional provision reserving the powers. This has been the experience of Utah and several other states which have in their constitutions similar

provisions. If, therefore, the reservation of the initiative and referendum powers be deemed desirable, the short form of provision contained in the Utah constitution, cannot be recommended.

The second type of constitutional provision, while more elaborate than the Utah type, does not incorporate into the constitution complete details for the practical operation of the reserved powers. Missouri's constitutional provision is illustratitve of this type:

> "Section 57. Initiative and Referendum. The legislative authority of the state shall be vested in a legislative assembly, consisting of a senate and house of representatives, but the people reserve to themselves power to propose laws and amendments to the constitution, and to enact of reject the same at the polls, independent of the legislative assembly, and also reserve power at their option to approve or reject at the polls any act of the legislative assembly. The first power reserved by the people is the initiative, and not more than eight per cent. of the legal voters in each of at least two-thirds of the congressional districts in the state shall be required to propose any measure by such petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions shall be filed with the secretary of state not less than four months before the election at which they are to be voted upon. The second power is the referendum, and it may be ordered (except as to laws necessary for the immediate preservation of the public peace, health or safety and laws making appropriations for the current expenses of the state government, for the maintenance of the state institutions and for the support of public schools) either by the petitions signed by five per cent. of the legal voters in each of at least two-thirds of the congressional districts in the state, or by the legislative assembly, as other bills are enacted. Referendum petitions shall be filed with the secretary of state not more than ninety days after the final adjournment of the session of the legislative assembly which passed the bill on which the referendum is demanded. The veto power of the governor shall not extend to measures referred to the people. All elections on measures referred to the people of the state shall be had at the biennial regular general elections, except when the legislative assembly shall order a special election. Any measure referred to the people shall take effect and become the law when it is approved by a majority of the votes cast thereon, and not otherwise. The style of all bills shall be: 'Be it enacted by the people of the State of Missouri.' This section shall not be construed to deprive any member of the legislative assembly of the right to introduce any measure. The whole number of votes cast for justice of the supreme court at the regular election last preceding the filing of any petition for the initiative, or for the referendum, shall be the basis on which the number of legal voters necessary to sign such petition shall be counted. Petitions and orders for the initiative and for the referendum shall be filed with the secretary of state, and in submitting the same to the people he, and all other officers, shall be guided by the general laws and the act submitting this amendment, until legislation shall be especially provided therefor."

It is evident that this type of provision is more likely to accomplish the intended result than the first.

The third type of provision embodies the most complete detail for the operation of the initiative and referendum. The Ohio constitutional provision is typical:

> "Section 1. The legislative power of the state shall be vested in a general assembly consisting of a senate and house of representatives but the people reserve to themselves the power to propose to the general assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided. They also reserve the power to adopt or reject any law, section of any law or any item in any law appropriating money passed by the general assembly, except as hereinafter provided; and independent of the general assembly to propose amendments to the constitution and to adopt or reject the same at the polls. The limitations expressed in the constitution, on the power of the general assembly to enact laws, shall be deemed limitations on the power of the people to enact laws. (Adopted Sept. 3, 1912.)
>
> Section 1a. The first aforestated power reserved by the people is designated the initiative, and the signatures of ten per centum of the electors shall be required upon a petition to propose an amendment to the constitution. When a petition signed by the aforesaid required number of electors, shall have been filed with the secretary of state, and verified as herein provided, proposing an amendment to the constitution, the full text of which shall have been set forth in such petition, the secretary of state shall submit for the approval or rejection of the electors, the proposed amendment, in the manner hereinafter provided, at the next succeeding regular or general election in any year occurring subsequent to ninety days after the filing of such petition. The initiative petitions, above described, shall have printed across the top thereof: 'Amendment to the Constitution Proposed by Initiative Petition to be Submitted Directly to the Electors,' (Adopted Sept. 3, 1912.)
>
> "Section 1b. When at any time, not less than ten days prior to the commencement of any session of the general assembly, there shall have been filed with the secretary of state a petition signed by three per centum of the electors and verified as herein provided, proposing a law, the full text of which shall have been set forth in such petition, the secretary of state shall transmit the same to the general assembly as soon as it convenes. If said proposed law shall be passed by the general assembly, either as petitioned for or in an amended form, it shall be subject to the referendum. If it shall not be passed, or if it shall be passed in an amended form, or if no action shall be taken thereon within four months from the time it is received by the general assembly, it shall be submitted by the secretary of state to the electors for their approval or rejection at the next regular or general election, if such submission shall be demanded by supplementary petition verified as herein provided and signed by not less than three per centum of the electors in addition to those signing the original petition, which supplementary peti-

tion must be signed and filed with the secretary of state within ninety days after the proposed law shall have been rejected by the general assembly or after the expiration of such term of four months, if no action has been taken thereon, or after the law as passed by the general assembly shall have been filed by the governor in the office of the secretary of state. The proposed law shall be submitted in the form demanded by such supplementary petition, which form shall be either as first petitioned for or with any amendment or amendments which may have been incorporated therein by either branch or by both branches of the general assembly. If a proposed law so submitted is approved by a majority of the electors voting thereon, it shall be the law and shall go into effect as herein provided in lieu of any amended form of said law which shall have been passed by the general assembly, and such amended law passed by the general assembly shall not go into effect until and unless the law proposed by supplementary petition shall have been rejected by the electors. All such initiative petitions, last above described, shall have printed across the top thereof, in case of proposed laws: 'Law Proposed by Initiative Petition First to be Submitted to the General Assembly.' Ballots shall be so printed as to permit an affirmative or negative vote upon each measure submitted to the electors. Any proposed law or amendment to the constitution submitted to the electors as provided in section 1a and section 1b, if approved by a majority of the electors voting thereon, shall take effect thirty days after the election at which it was approved and shall be published by the secretary of state. If conflicting proposed laws or conflicting proposed amendments to the constitution shall be approved at the same election by a majority of the total number of votes cast for and against the same, the one receiving the highest number of affirmative votes shall be the law, or in the case of amendments to the constitution shall be the amendment to the constitution. No law proposed by initiative petition and approved by the electors shall be subject to the veto of the governor. (Adopted Sept. 3, 1912.)

"Section 1c. The second aforestated power reserved by the people is designated the referendum, and the signatures of six per centum of the electors shall be required upon a petition to order the submission to the electors of the state for their approval or rejection, of any law, section of any law or any item in any law appropriating money passed by the general assembly. No law passed by the general assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state, except as herein provided. When a petition, signed by six per centum of the electors of the state and verified as herein provided, shall have been filed with the secretary of state within ninety days after any law shall have been filed by the governor in the office of the secretary of state, ordering that such law, section of such law or any item in such law appropriating money be submitted to the electors of the state for their approval or rejection, the secretary of state shall submit to the electors of the state for their approval or rejection such law, section or item, in the

manner herein provided, at the next succeeding regular or general election in any year occurring subsequent to sixty days after the filing of such petition, and no such law, section or item shall go into effect until and unless approved by a majority of those voting upon the same. If, however, a referendum petition is filed against any such section or item, the remainder of the law shall not thereby be prevented or delayed from going into effect. (Adopted Sept. 3, 1912.)

"Section 1d. Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect. Such emergency laws upon a yea and nay vote must receive the vote of two-thirds of all the members elected to each branch of the general assembly, and the reasons for such necessity shall be set forth in one section of the law, which section shall be passed only upon a yea and nay vote, upon a separate roll call thereon. The laws mentioned in this section shall not be subject to the referendum. (Adopted Sept. 3, 1912).

"Section 1e. The powers defined herein as the 'initiative' and 'referendum' shall not be used to pass a law authorizing any classification of property for the purpose of levying different rates of taxation thereon or of authorizing the levy of any single tax on land or land values or land sites at a higher rate or by a different rule than is or may be applied to improvements thereon or to personal property. (Adopted Sept. 3, 1912.)

"Section 1f. The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action; such powers shall be exercised in the manner now or hereafter provided by law. (Adopted Sept. 3, 1912.)

"Section 1g. Any initiative, supplementary or referendum petition may be presented in separate parts but each part shall contain a full and correct copy of the title, and text of the law, section or item thereof sought to be referred, or the proposed law or proposed amendment to the constitution. Each signer of any initiative, supplementary or referendum petition must be an elector of the state and shall place on such petition after his name the date of signing and his place of residence. A signer residing outside of a municipality shall state the township and county in which he resides. A resident of a municipality shall state in addition to the name of such municipality, the street and number, if any, of his residence and the ward and precinct in which the same is located. The names of all signers to such petitions shall be written in ink, each signer for himself. To each part of such petition shall be attached the affidavit of the person soliciting the signatures to the same, which affidavit shall contain a statement of the number of the signers of such part of such petition and shall state that each of the signatures attached to such part was made in the presence of the affiant, that to the best of his knowledge

and belief each signature on such part is the genuine signature of the person whose name it purports to be, that he believes the persons who have signed it to be electors, that they so signed said petition with knowledge of the contents thereof, that each signer signed the same on the date stated opposite his name; and no other affidavit thereto shall be required. The petition and signatures upon such petitions, so verified, shall be presumed to be in all respects sufficient, unless not later than forty days before the election, it shall be otherwise proved and in such event ten additional days be allowed for the filing of additional signatures to such petition. No law or amendment to the constitution submitted to the electors by initiative and supplementary petition and receiving an affirmative majority of the votes cast thereon, shall be held unconstitutional or void on account of the insufficiency of the petitions by which such submission on the same was procured; nor shall the rejection of any law submitted by referendum petition be held invalid for such insufficiency. Upon all initiative, supplementary and referendum petitions provided for in any of the sections of this article, it shall be necessary to file from each of one-half of the counties of the state, petitions bearing the signatures of not less than one-half of the designated percentage of the electors of such county. A true copy of all laws or proposed laws or proposed amendments to the constitution, together with an argument or explanation, or both, and also an argument or explanation, or both, against the same, shall be prepared. The person or persons who prepare the argument or explanation, or both, against any law, section or item, submitted to the electors by referendum petition, may be named in such petition and the persons who prepare the argument or explanation, or both, for any proposed law or proposed amendment to the constitution may be named in the petition proposing the same. The person or persons who prepare the argument or explanation, or both, for the law, section or item, submitted to the electors by referendum petition, or against any proposed law submitted by supplementary petition, shall be named by the general assembly, if in session, and if not in session then by the governor. The secretary of state shall cause to be printed the law, or proposed law, or proposed amendment to the constitution, together with the arguments and explanations, not exceeding a total of three hundred words for each, and also the arguments and explanations, not exceeding a total of three hundred words against each, and shall mail, or otherwise distribute, a copy of such law, or proposed law, or proposed amendment to the constitution, together with such arguments and explanations for and against the same to each of the electors of the state, as far as may be reasonably possible. Unless otherwise provided by law, the secretary of state shall cause to be placed upon the ballots, the title of any such law, or proposed law, or proposed amendment to the constitution, to be submitted. He shall also cause the ballots so to be printed as to permit an affirmative or negative vote upon each law, section of law, or item in a law appropriating money, or proposed law or proposed amendment to the constitution. The style of all

laws submitted by initiative and supplementary petition shall be: 'Be it Enacted by the People of the State of Ohio,' and of all constitutional amendments: 'Be it Resolved by the People of the State of Ohio.' The basis upon which the required number of petitioners in any case shall be determined shall be the total number of votes cast for the office of governor at the last preceding election therefor. The foregoing provisions of this section shall be self-executing, except as herein otherwise provided. Laws may be passed to facilitate their operation, but in no way limiting or restricting either such provision or the powers herein reserved."

There can be no doubt but that a provision of this character renders it impossible for the general assembly by hostile legislation to interfere with the powers specifically reserved by the electors to themselves.

Whether a provision such as that contained in the Missouri constitution or such as written into the Ohio constitution is preferable, depends entirely upon the extent to which the legislature can be relied upon to respond to the spirit and purpose of the constitutional provision reserving the initiative and referendum powers.

I have received from Mr. Wm. A. Schnader, of the Philadelphia Bar, who has made an extensive study of the subject, visiting all states which have had practical experience with initiative and referendum provisions, the following which he regards as a suitable form of initiative and referendum provisions for Pennsylvania:

"The legislative power of this commonwealth shall be vested in a general assembly which shall consist of a senate and a house of representatives; but the electors reserve to themselves the power to propose laws and to enact or reject the same at the polls and the power to approve or reject at the polls any act passed by the legislature except acts making appropriations for the conduct or to meet deficiencies arising out of the conduct of the state government or of state institutions.

"These powers shall respectively be known as the initiative and the referendum. The initiative and referendum shall be invoked by petition. Every initiative petition shall set forth in full the proposed measure, and every referendum petition, the referred measure, and shall be filed with the secretary of the commonwealth. Only qualified electors shall be eligible to sign initiative or referendum petitions, and the full address of each signer shall follow his signature.

Initiative and referendum petitions shall contain at least one hundred and fifty thousand signatures, five per centum of which shall have been affixed by electors of each of fifteen counties of this commonwealtth. Petitions may be circulated in sections, provided that each section contains the full text of the proposed or referred measure. To each section shall be attached the sworn statement of the person having circulated the same that the signers thereof are qualified electors of the county of which such person shall be a qualified elector. Immediately upon receipt of any initiative or referendum petition

it shall be the duty of the secretary of the commonwealth to canvass the same to ascertain if it has been signed by the requisite number of qualified electors.

"Initiative petitions shall be filed with the secretary of the commonwealth at least thirty days before the commencement of any session of the general assembly. If after the filing of any such petition the secretary of the commonwealth shall find that it contains the requisite number of signatures of qualified electors, he shall transmit it to the general assembly as soon as it shall have convened and organized; and it shall be the duty of the general assembly within forty days after receiving the petition either to enact or reject the measure proposed in such petition without amendment. Should the measure be enacted it shall be subject to referendum as hereinafter provided. If the measure be rejected or if no action be taken thereon within said forty days the secretary of the commonwealth shall submit such proposed law to the electors for approval or rejection at the next ensuing municipal or general election.

"The general assembly may reject any measure proposed by initiative petition and propose a different measure upon the same subject by a yea and nay vote upon separate roll call and in such event the measure proposed by petition and the measure proposed by the general assembly shall both be submitted by the secretary of the commonwealth to the electors for approval or rejection at the next ensuing general or municipal election.

"No law enacted by the general assembly shall go into effect until ninety days after the final adjournment of the session of the general assembly at which such law shall have been enacted except laws making appropriations for the conduct or to meet deficiencies arising out of the conduct of the state government or of state institutions and except further such acts immediately necessary for the preservation of the public peace, health or safety as shall have been declared to be such by the vote of two-thirds of the members elected to each house of the general assembly.

"Referendum petitions shall be filed with the secretary of the commonwealth within ninety days after the final adjournment of the general assembly which enacted the laws contained in such petitions. If after the filing of any such petition the secretary of the commonwealth shall find that it has been signed by the requisite number of qualified electors, he shall submit the measure contained in such petition to the electors for approval or rejection at the next succeeding general or municipal election; and no such act shall go into effect until and unless approved by a majority of qualified electors voting thereon.

"Any act or proposed act submitted to the electors as hereinbefore provided and approved by a majority of the electors voting thereon at any election shall take effect ten days after the date of the official declaration of the vote by the secretary of the commonwealth.

"No act adopted by the electors shall be subject to the veto power of the governor and no act proposed by initiative peti-

tion and adopted by the electors shall be amended or repealed except by a vote of the electors unless otherwise provided in such act; but the general assembly may propose to the electors the amendment or repeal of the whole or any part of such act. Acts referred to the electors by referendum petition and adopted may be amended by the general assembly at any subsequent session thereof.

"The foregoing provisions of this section shall be self-executing but the general assembly shall have the power to enact laws to facilitate their operation but in no way limiting or restricting such provisions or the powers herein reserved or increasing the necessary number of signers of initiative or referendum petitions beyond one hundred fifty thousand qualified electors."

Very truly yours,

WM. DRAPER LEWIS,

Secretary.

MEMORANDA AND BRIEFS NO. 48.

EMINENT DOMAIN—PROVISIONS FOR COMPENSATION UNDER XIVTH AMENDMENT TO THE FEDERAL CONSTITUTION AND ARTICLE I, SECTION 10, OF THE CONSTITUTION OF PENNSYLVANIA.

Harrisburg, June 15, 1920.

George Wharton Pepper, Esq.,
Chairman, Committee No. 4.

Dear Sir:

You have asked me to ascertain the time when compensation for private property taken for public use must be paid under (1), the decisions of the Supreme Court of the United States interpreting the fourteenth amendment to the federal constitution, and (2) the decisions of the Supreme Court of Pennsylvania interpreting article I, section 10 of the constitution of the state. I shall try and answer the questions in the order indicated.

1. Under the 14th amendment.

That part of the 14th Amendment bearing on the question is the clause which provides that: "nor shall any state deprive any person of life, liberty or property without due process of law." This provision has been held by the supreme court to require compensation to be made to the owner of private property taken for public use under the authority of a state. (Chicago Burlington & Quincy R. R. Co. vs. Chicago, 166 U. S. 226, 1897).

The effect, therefore, of the foregoing clause on state action is similar to the effect on federal action of that part of the 5th Amendment which provides "nor shall private property be taken for public use, without just compensation."

The general rule as to when the compensation must be paid or, if not paid, how it must be secured, was thus stated by the supreme court in a case arising under the 5th Amendment:

> "It (the constitution of the United States) does not provide or require that compensation shall be actually paid in advance of the occupancy of the land to be taken. But the owner is entitled to reasonable, certain and adequate provision for obtaining compensation before his occupancy is disturbed. Whether a particular provision be sufficient to secure the compensation to which, under the constitution, he is entitled, is sometimes a question of difficulty. In the present case, the requirements of the constitution have, in our judgment, been fully met. The third section provides that before the railway shall be constructed through any lands proposed to be taken, full compensation shall be made to the owner for all property to be taken or damage done by reason of the construction of the road. In the event of an appeal from the finding of the referees, the company is required to pay into court double the amount of the award, to abide its judgment; and, that being done, the company may enter upon the property sought to be condemned, and proceed with the construction of its road. We are of the opinion that this provision is sufficiently reasonable, certain and adequate to secure the just compensation to whicch the owner is entitled." (Cherokee Nation vs. Southern Kansas R. R. Co. 135 U. S. 641, 658, 1890).

In Sweet vs. Rechel, 159 U. S. 380, (1895) the court passed upon the validity, under the 14th Amendment, of an act of the legislature of Massachusetts which authorized the city of Boston to acquire title to certain lands, for a public purpose and which gave to the owner a claim for compensation against the city to be ascertained and collected by judicial process. It was contended that the act was void because by it the city acquired possession and title to the land before payment of compensation to its owners. The Court in holding valid the statute said:

> "The legislature may authorize a municipal corporation to take, for public use, at the outset, the absolute title to specific private property, if either the statute under which that is done, or a general statute recognizes the absolute right of the owner, upon his property being taken, to just or reasonable compensation therefor, and makes provision, in the event of the disagreement of the parties, for the ascertainment, by suit, without unreasonable delay or risk to the owner, of the compensation to which, under the constitution, he is entitled, and to a judgment in his favor enforceable against such corporation in some effective mode, so that the owner can certainly obtain the amount of such compensation."

The authority of these two decisions has never been questioned; on the contrary, these cases have been repeatedly followed. The latest example is in Brigg vs. Weaver, 251 U. S. 62, (1919), in which the court citing its earlier decisions said:

> "It is settled by the decisions of this court that where adequate provision is made for the certain payment of the compensation without unreasonable delay, the taking does not contravene due process of law in the sense of the 14th Amendment merely because it precedes the ascertainment of what compensation is just."

It is therefore clear from the above decisions that private property can be appropriated for public use before compensation therefor is paid or even ascertained, if adequate provision is made for the payment of such compensation as may be found due. It remains therefore, in order to answer fully your question, to determine what is "adequate provision" for compensation under the decisions of the supreme court.

In Crozier vs. Krupp, 224 U. S. 290 (1911) an act of Congress giving to a patentee in case of an infringement by the United States a right "to recover reasonable compensation * * * * * by suit in the Court of Claims," was held to make adequate provision for compensation. The court in its decision treated the infringement by an officer of the United States, as an exercise of the power of eminent domain.

In Adirondack Ry. Co. vs. People of N. Y. 176 U. S. 335 (1900) a statute of the state of New York which provided for payment of compensation to owners of land taken for public uses from the state treasury by proceedings in a court of claims was held to make adequate provision for compensation.

In Sweet vs. Rechel (supra) and Williams vs. Parker, (188 U. S. 491, 1903) statutes of Massachusetts were held valid which provided that the city of Boston should be liable for compensation to owners of property appropriated for public uses. In the first of these cases the court said:

> "It is equally clear that an adequate provision is made when the statute, authorizing a public municipal corporation to take private property for public uses, directs the regular ascertainment, without improper delay and in some legal mode, of the damages sustained by the owner, and gives him an unqualified right to a judgment for the amount of such damages which can be enforced, that is, collected, by judicial process."

In neither of these cases was the solvency of the city of Boston questioned. On the contrary in Williams vs. Parker, the court said "A solvent debtor—one whose solvency is not liable to go up or down like that of an individual, but is of substantial permanence, is provided.", (Page 504).

I have found no case where the solvency of a municipality, whose resources were pledged to make compensation, was raised; but from the reasoning in the cases cited it would seem that if an inability to pay such compensation as might be found due were shown that then the security would be held to be inadequate. See Keene vs. Bristol 26 Pa. 46. It has been held, however, that the failure of Congress to make an appropriation for payment of such compensation as might be found due by the Court of Claims did not render the security invalid since "It is assumed that the United States is incapable of bad faith and that Congress will promptly make the

necessary appropriation whenever the amount of compensation has been ascertained as provided by the act." (Great Falls vs. Attorney-General, 124 U. S. 510, 1888).

When the power of eminent domain is exercised by a duly authorized private corporation the court has held that adequate provision for compensation is made when a sum equal to twice the amount awarded in the first instance is deposited in court (Cherokee Nation vs. Southern Kansas Ry. Co. 135 U. S. 641, 1890), or even where only the amount so awarded with a sum to cover costs and counsel fees is deposited (Bachus vs. Fort Street Union Depot Co. 169 U. S. 557, 1898).

In Manigault vs. Spring, 199 U. S. 473 (1905) a statute of South Carolina giving the power of eminent domain to a private corporation to build a dam made no provision for the deposit of any sum to secure those deprived of their property but merely stated that the company should be liable for all damage. It was contended by one owning land adjacent to the land appropriated that the act was void. The plaintiff failed to convince the court that he had suffered substantial damage and in dismissing his bill for an injunction it said:

> "In view of the incidental character of the damage probably resulting to plaintiff's land from the erection of this dam, and the careful provision of the act that the defendants shall be liable for such damage, we do not think, at least, in the absence of an allegation that the defendants are financially irresponsible, that a court of equity would be authorized to enjoin the erection until the damages, which, if they exist at all, must be very difficult of ascertainment, shall be paid."

There appears to be no case in the supreme court which goes to the extent of holding that the credit of a private corporation is sufficient for compensation for the actual taking of private property. The general rule in the state courts is that such security is inadequate. (Lewis on Eminent Domain, sec. 677, etc).

The answer to your question, therefore, is that under the present decisions of the supreme court private property can be appropriated for public uses before payment or ascertainment of the compensation due, but in such cases adequate provision to secure payment must be made. The liability of the state or of a municipality thereof, able to pay such compensation as may be found due is sufficient security. In the case of a private corporation it seems that a deposit of at least the amount awarded in the first instance must be made.

2. Under Article I, section 10 of the constitution of the state of Pennsylvania.

When must compensation for private property taken for public use be paid or secured under the Constitution of Pennsylvania?

> Article I, section 10 provides in part: "Nor shall private property be taken or applied to public use, without authority of law and without just compensation being first made or secured."
>
> Article XVI, section 8, provides, in part: "Municipal and other corporations and individuals invested with the privilege of taking private property for public use shall make just compensation for property taken, injured or destroyed by the

constitution or enlargement of their works, highways or improvements, which compensation shall be paid or secured before such taking, injury or destruction."

Substantially similar provisions existed in the constitution of 183, except that the payment or securing of compensation only applied to an actual taking of property and not to consequential damage thereto. (Spangler's Appeal, 64 Pa. 387, 1870; Delaware County's Appeal, 119 Pa. 159, 171, 1888).

The reason for requiring either payment of compensation or security therefor prior to the taking of private property is thus expressed by Lewis, J., in Yost's Appeal, 17 Pa. 524, 531, (1851):—

> "A practice had prevailed under the old constitution of investing corporations and individuals with the *privilege* (to be exercised at their discretion) of taking private property for their own benefit, in cases where the legislature deemed the object sought to be accomplished one which would also promote the public good. But the corporations and individuals invested with this privilege were sometimes insolvent, and the citizens was, by that means, deprived of the compensation secured to him by the constitution. The amendment of 1838 was adopted to remedy this evil."

It has been held that compensation recoverable from the commonwealth is adequately secured. State Highway Commissioner vs. Chambersburg & Bedford Turnpike Company, 242 Pa. 171, (1913). In this case a statute was held constitutional which provided that the commissioner might take immediate possession of any turnpike road without filing a bond, but merely upon certifying that sufficient funds to pay damages had been appropriated by the legislature, and that the damages found due in accordance with the act should be "paid by the commonwealth." "Here provision is made for assessing the damages and the credit of the commonwealth is sufficiently pledged to pay for all property taken; this is an adequate remedy and ample security to the appellant." (Page 176).

The liability of a school district is sufficient, (Long vs. Fuller, 68 Pa. 170, 1871) or of a county (Lewisburg Bridge Co. vs. Union and Northumberland Counties, 232 Pa. 255). In the latter case the court quoted with approval from its opinion in Delaware County's Appeal:

> "It has been repeatedly held that the power of taxation in a municipal corporation is sufficient security for property taken by such corporation, hence it logically follows that it is sufficient for property injured." (Page 266).

Where the municipality is not able to pay the compensation within a reasonable time because the power of taxation is inadequate to raise sufficient funds then the security is inadequate and the municipality will be required to enter bond with sufficient surety before taking private property. Keene vs. Bristol, 26 Pa. 46 (1856).

In the case of a private corporation the liability of the corporation, even if solvent, is not sufficient but additional security must be entered. In Yost's Appeal (supra) it was said:—

"The difference between the two classes of cases has been held to be that a 'corporation' or an individual must *pay* or *secure* the price of the property *before* it is taken; but the state must provide the *means* of payment at the passing of the act."

(Quoted with approval in State Highway Commissioner vs Chambersburg and Bedford Turnpike Company-supra).

In Turnpike Road vs. Railway Company, 177 Pa. 585, (1896) a statute which provided that in cases of appeal from the award of viewers, the title to the property in question should vest in the corporation upon the payment into court by it of the amount awarded by the viewers was held unconstitutional, on the ground that the appellant was entitled to security for such sum as might be finally awarded him on appeal, in excess of the amount deposited.

To sum up, therefore, it appears that under the decisions of the Supreme Court of Pennsylvania compensation is adequately secured by making the state liable for any municipality thereof, which is solvent and able under its powers of taxation to pay within a reasonable time such compensation as may be found due. In the case of private corporations, authorized to exercise the power of eminent domain, a bond with good sureties in an amount sufficient to cover such sum as might ultimately be determined due must be entered.

It will be seen, therefore, that there is no difference between the interpretation by the Supreme Court of the United States of the provisions of the XIVth Amendment and the interpretation by the Courts of Pennsylvania of the provisions of Article I, section 10 of the state constitution.

Very truly yours,

WM. DRAPER LEWIS,

Secretary.

MEMORANDA AND BRIEFS No. 49.

CHARITABLE APPROPRIATIONS—LETTER OF HON. WILLIAM FLINN.

Harrisburg, Pa. June 15, 1920.

Hon. John S. Fisher,
Commissioner.

Dear Sir:—I understand you desire to have the letter addressed to you by Hon. William Flinn on the subject of charitable appropriations by the Commonwealth printed and distributed to the members of the commission. I therefore append hereto Mr. Flinn's letter.

Very truly yours,

WM. DRAPER LEWIS,

Secretary.

May 14th, 1920.

Hon. John S. Fisher,
Commissioner of Banking,
Harrisburg, Penna.

My Dear Senator:—I have read the pamphlet of Mr. Kenneth L. M. Pray, Secretary of the Public Charities Association of Pennsylvania, on the suggested practice of the state in connection with hospitals and similar institutions. I can't quite figure out the necessity of adopting his theoretical method of appropriating money to the different centers of the state. It is a well known fact that the best talent in hospitals is in the large centers of population, and consequently people living in the sparsely settled parts of the state drift to the large centers for hospital care; then in addition to that, the free patients treated in the hospitals are—a very large percentage of them, people who do not live in the large centers at all but come in there,—sort of transient people who have no fixed habitation in the centers.

I have no doubt that there may be some hospitals under the present system that are being operated inefficiently because of the fact that they do not have proper supervision or because of the carelessness of the boards of directors. It always struck me that the state ought to have a Department of Charities manned by paid officials who would not alone look after the hospitals of the state but all other forms of public institutions such as insane asylums, jails and all public institutions of this kind.

I have always believed that private management is much more efficient than public management of any line of business of an industrial or commercial character; the management of hospials is an industrial business. The West Penn Hospital expended in maintenance, which includes labor, food and general supplies, $455,658.61 in 1919, which really makes such an institution an industrial proposition. There are many things about the present system that are very good from the standpoint of the sate as they contribute no money to the care of free patients except the deficiency. The average cost of patients in 1919 was $2.78 per patient per diem, and the amount paid by the state was $1.113 per free patient per diem, the difference being accounted for by profits on the paid patients and income from endowments. The present system should be changed to provide for per diem payments. As it is now we expend all of the money we earn and we also expend the money that the state gives us and then we are through. If the hospital installs an X-Ray plant, installs or extends a pathological department, or re-equips large rooms with baths the hospital must secure this money from some other source than from its returns from endowments and from the money appropriated by the state; in other words, they must secure it by subscriptions. If these installations should earn a net income of one thousand dollars a month—the next year the state reduces the appropriation that much, figuring that this thousand dollars will be permanent receipts.

I have always thought that a very much better and more efficient method would be for the state to put hospitals in zones and pay the hospital so much per patient per diem for the treatment of charity or free patients, figuring as free patients all those patients who pay nothing to the hospital; and as to the patients who make part payment to the hospital but not sufficient to maintain

them, the aggregate amount of money received from such patients divided by the per diem cost of maintenance would give the number of days fully paid and this deducted from the total days for part pay patients would indicate the free days absorbed by the part pay class of patients.

On behalf of the West Penn Hospital I made a proposition to the appropriation committee last year that they give us $1.30 a day for each free patient,—appropriating their usual appropriation of $75,000.00 per year as the maximum amount that the state would be liable for and the hospital being paid at the rate of $1.30 per free patient per diem. This method would be an incentive to the hospital management to save as much money as it was possible to save and then if they had any improvements of any kind of a minor character to make in the hospital they could use this money for that purpose,—whereas, if there are at present three chairs in a room and you wish to put three additional ones in you have either got to borrow chairs from some other part of the hospital or go outside and solicit subscriptions for chairs. This plan which I suggested would make the hospitals very much more efficient and give them further incentive for economical and efficient operation.

The present system of the state appropriating money to pay for the cost of charitable patients has been in operation for more than half a century. Nothing could possibly be gained by a change that would compel the municipalities and counties to appropriate money for this purpose. The money would still come out of the public treasuries and it would simply be a change. If the present system was modified so as to pay a per diem compensation based on a proper cost of operation and the state would provide a department with paid officials that would be on the work all the time—similar to the banking department, there would be but little cause for complaint. .

The enlistment of thousands of the best men and women of the state in the management of these hospitals contributes very much to their success and very much to the care of the patients. The advent of women in public and semi-public affairs will very much help hospital management, and if there was proper state supervision to see that the state's money was wisely spent a condition of affairs would result where there would be little to complain about.

If the state adopted the per diem basis of payment a great difference would be made in rates of payment; the small hospitals with no endowment would receive more per free patient per diem than the large hospitals or the institutions with religious connections whose expenses are less due to this fact. Finally, the cost to the state would readily disclose the inefficient hospital.

The care and maintenance of the feeble minded of the state is something that the state ought to take in hand more energetically than she has done, and instead of individuals attacking established systems such as hospitals they could with propriety attack the efficiency of the state, and it would be a blessing to the people generally if such a thing was done and done speedily. The lack of care and control of the feeble minded and the propagation of them is a disgrace to the commonwealth.

Very truly yours,

WM. DRAPER LEWIS,

Secretary.

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